

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 803

CALIFORNIA, PETITIONER,

vs.

LYMAN E. BUZARD.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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[fol. 1]

**IN THE
JUSTICE COURT OF ATWATER JUDICIAL DISTRICT
COUNTY OF MERCED, CALIFORNIA**

No. 5522

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

LYMAN E. BUZARD, 924th Air Refueling Sqd.,
Castle AFB, California, Defendant.

CERTIFIED COPY OF THE DOCKET ENTRIES

[fol. 2]

.....Miles
5

Complaint of ANDERSON Charging violation of Section 4000 of the Motor Vehicle Act.

Committed at and in
Merced County, California, on the 26th day of Feb., 1960

State License No. Chauffeur's No. Operator's No.

DATE

PROCEEDINGS

Complaint filed charging Defendant with crime of violating Section of the Motor Vehicle Act. Cited to appear APRIL 27, 1960

- 4-11-60 Complaint filed
- 4-26-60 Call from Mr. Adams, acting Atty. for Defendant advising he would appear for defendant either 27th or 28th of April 1960.
- 4-28-60 Mr. Adams, acting Atty. for defendant appeared and entered a plea of NOT GUILTY for defendant, Court Trial set for 2:00 P.M. 5-20-60.

DATE

PROCEEDINGS

- 5-19-60 Call from District Attorney requesting above trial be re-set for 2:00 P.M. June 1, 1960, request granted by Court.
- 5-20-60 Letter from Mr. Goff, Atty. for defendant agreeing to new trial date, and waiving time for trial [fol. 3] on behalf of defendant.
- 5-31-60 Amended complaint filed by Stephen P. Galvin, District Attorney charging violation of section 4000 C.V.C.
- 6 -1-60 Defendant Lyman E. Buzard, with Atty. Mr. Goff appeared, and Dept. D.A. Mr. Hallford appeared for the People, Defendant was duly arraigned on Amended Complaint, Mr. Goff, Atty. for defendant filed DEMURRER TO ACCUSATORY PLEADING on behalf of defendant, arguments to Demurrer were heard by the Court, and the Demurrer after hearing arguments on same was *overruled* by the Court, the Demurrer was filed to cover both complaints on file in said matter, the defendant after ruling on demurrer by the Court entered a plea of NOT GUILTY to amended complaint and trial was set for July 6, 1960 at 2:00 P.M. trial by Court requested by Mr. Goff, both attorneys stipulated to oral ruling on Demurrer.
- 6- 1-60 This Court given copy of PETITION FOR WRIT OF PROHIBITION by Atty. for defendant, Mr. Goff. as filed with Co. Clerk 6-1-60, 4:26 PM.
- 6- 1-60 Defendant, Lyman E. Buzard, posted \$105.00 cash bail. (Trust Fund; Rec. 25729.) To appear July 6, 1960 at 2:00 P.M.

DATE

PROCEEDINGS

- 6-16-60 Received and filed copy of ALTERNATIVE
[fol. 4] WRIT OF PROHIBITION from Charles E. Goff, Atty. for Defendant as filed with the Superior Court.
- 9-28-60 Received and filed from Law Offices of C. Ray Robinson, Atty. Defendant NOTICE OF APPEAL as filed with Superior Court in and for the County of Merced.
- 7-23-62 Judge Elmer L. Libby orders def be contacted or his attorney, for action to be adjudicated as to bail in amt \$105.00 still in Trust fund—awaiting forfeiture of same or refund.
- 7-23-62 Contacted Law Offices of C. Ray Robinson re above action set for final dispo—Receptionist advises proper attorney would be notified and would contact Judge Libby.
- 7-31-62 Letter to John E. Whiting, Atty. and Def's representative advising action will be held on Friday, August 10, 1962 at 10:00 A.M. and request confirmation of same.
- 8- 1-62 Letter to Atty. Kaplan this date advising of case involving Buzard vs. Justice Court (Appellate Court)
- 8- 2-62 Letter from Atty. John Whiting this date advising that action has been re-set for Friday, August 17, 1962 as on first hearing date, tentatively set for August 10, 1962. Attorney Whiting will be out of town. Prior to letter, a note was sent to DA Stephen Galvin from Atty Whiting regarding above mentioned action.
- [fol. 5]
8-16-62 DA's office advises Court trial to be taken from calendar—to be re-set possibly within a week.

DATE

PROCEEDINGS

Court req letter advising same, which was refused by DA Galvin.

- 9- 4-62 Court contacted DA's office re re-setting of Court trial. Court to be notified no later than 9-5-62.
- 9-11-62 Court contacted Atty. John Whiting for setting of Court trial. Court was advised by atty. that no witnesses will be present for Court trial, and atty. will present a statement of facts for evidence. Court contacted atty.'s sec—Court trial set for Friday, October 5, 1962 at 10:00 A.M.
- 9-28-62 Letter to Mrs. Alyce T. Hogan, Sec for Chairman of Judicial Counsel advising that Judge Elmer L. Libby respectfully enters plea for disqualification re Court trial set for Fri/Oct 5, 1962 at 10:00 A.M. Plea is based on the formulating of opinion prior to court trial.
- 12-11-62 Received and filed copy of letter from District Attorney, Stephen P. Galvin to Law Offices of C. Ray Robinson, Attorney John Whiting, stating he would like to be notified as to the status of said case. Also noting that Mr. Whiting, to the best of Mr. Galvin's recollection, was to submit a brief in support of his legal contention.
- 12-27-62 Received and filed copy of letter from Stephen P. Galvin, District Attorney, to Judge Mahoney, Livingston, requesting matter be brought to a decision in the near future.
[fol. 6]
- 1- 8-63 The defendant, Lyman E. Buzard, is hereby found guilty of violation of section 4000 C.V.C.
- 1- 8-63 Sentence will be passed 1-14-63 at 1:00 P.M.

DATE

PROCEEDINGS

- 1- 8-63 Letter written to Attorney John Whiting notifying him of date and time of sentencing. Copy mailed to District Attorney, Pat Hallford.
- 1-14-63 Both parties appeared—the def. fined \$50.00—judgment suspended and def. placed on probation for 6 months. The terms as follows:

To obey all Motor Vehicle Laws during the term of probation—bail to be exonerated—def. released on own R.

Motion that execution stayed until appeal perfected in District Court of Appeals as to Constitutionality.

By: Judge Mahoney

- 1-14-63 Tr. Ck #441 in amount of \$105.00 refunded for cash bail posted.
- 1-22-63 NOTICE OF APPEAL received this date and filed—duly issued and executed from the Law Offices of C. Ray Robinson—By: John E. Whiting. Attorneys for Petitioner.
- 2-19-63 Received and filed NOTICE OF APPEAL from Atty. John E. Whiting, Given to Court by Judge [fol. 7] J. H. Mahoney, Copies mailed to: Pat Hallford, District Attorney and to Stanley Mosk, Attorney General.
- 6-27-63 Letter duly issued and executed by Atty John E. Whiting requesting that “Stipulation Regarding Filing Appeal Statement”—copy be filed with the other papers on appeal in this Court.
- 6-27-63 *Stipulation Regarding Filing Appeal Statement* filed this date.

DATE

PROCEEDINGS

- 7-12-63 Letter duly issued and executed by Atty Rowell of the C. Ray Robinson Law Firm/Merced, California, stating that they enclosed original *Statement of Appeal* and *Notice to Prepare Record on Appeal* together with original transcript. This letter filed.
- 7-12-63 Received and filed "Statement on Appeal" and forwarded this "Statement of Appeal" with the Reporter's Transcript (Original) to the Clerk of the Superior Court of Merced, California.
- 7-12-63 Received and filed "NOTICE TO PREPARE RECORD ON APPEAL."
- 7-12-63 Letter to the Clerk of the Superior Court of Merced, stating that acting Judge Mahoney had indicated that time had elapsed as far as APPEAL was concerned and this Court requested that they might contact the acting Judge Mahoney as to whether this appeal might be legal since the time had elapsed.

[fol. 8] I, Elmer L. Libby, Judge of the Atwater Justice Court, Atwater Judicial District, County of Merced, State of California, do hereby certify the foregoing to be a true and correct copy of the original docket entries in this Court against the above named defendant, Lyman E. Buzard.

(Seal)

Dated: August 29, 1963.

By: Elmer L. Libby, Judge, Atwater Justice Court,
County of Merced, State of California.

[fol. 9]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT

COUNTY OF MERCED, CALIFORNIA

No. 5522

[Title omitted]

COMPLAINT—CRIMINAL (GENERAL)—Filed April 11, 1960

State of California,
County of Merced, ss.

Personally appeared before me, this 11th day of April, 1960, D. E. Anderson of California Highway Patrol, who being first duly sworn, complains and accuses, Lyman E. Buzard, of a misdemeanor, to wit: Violation of the California Vehicle Code, committed as follows:

The said defendant on or about the 26th day of February, 1960, at and in the County of Merced, State of California, and on a certain public highway of the State of California, [fol. 10] to wit: Bellevue Rd. did, while operating a 1959 Oldsmobile bearing Alabama, 1960, license No. 3-24002, wilfully and unlawfully violate section 4000 CVC

(Vehicle not registered and appropriate fees not paid under CVC)

All of which is contrary to the form, force and effect of the Statute in such case made and provided, and against the peace and dignity of the people of the State of California.

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant . . . , and that he may be dealt with according to law.

Donald E. Anderson

Subscribed and sworn to before me this 11th day of April, 1960.

Quinn Young, Judge of Atwater Judicial District.

(Seal)

Attest: _____, Clerk.

[fol. 11]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT

COUNTY OF MERCED, CALIFORNIA

No. 5522

AMENDED CRIMINAL COMPLAINT—Filed May 31, 1960

Personally appeared before me this 31st day of May, 1960, Stephen P. Galvin, Merced County District Attorney, who being sworn, complains and accuses, upon information and belief, said Defendant of a misdemeanor, to wit: Failure to Register Motor Vehicle and pay appropriate fees in violation of Section 4000 of the Vehicle Code of the State of California, committed as follows; said Defendant on or about the 26th day of February, 1960, near Atwater, in the County of Merced, State of California, did wilfully and unlawfully drive a motor vehicle upon a highway without said vehicle being registered in the State of California, and without having paid the appropriate California fees, said vehicle bore valid Alabama license plates and was registered in defendant's name for said state. Defendant is a resident of the State of Washington and a member of the Armed Forces, regularly assigned to Castle Air Force Base, California. Defendant on or about [fol. 12] September 1, 1959, was regularly assigned and stationed by competent military orders from said Castle Air Force Base to the State of Alabama for temporary duty, and while in said State of Alabama purchased a motor vehicle bearing valid Alabama license plates, which said vehicle defendant returned to Castle Air Force Base, California, his permanent duty station, on or about January 1, 1960, and thereafter at all times herein mentioned operated said vehicle in California with the said Alabama license plates without registering said vehicle in the State of California.

Said Complainant therefore prays that a warrant may be issued for the arrest of the said Defendant and that he may be dealt with according to law.

Subscribed and sworn to before me this 31 day of May, 1960.

(Seal)

Stephen P. Galvin

Quinn Young, Judge of the Said Judicial District,
County of Merced.

[fol. 13]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT

COUNTY OF MERCED, CALIFORNIA

No. 5522

No. 1232-D

DEMURRER TO ACCUSATORY PLEADING—Filed June 1, 1960

To the Honorable Quinn Young, Judge of the above entitled Court, and to the Honorable Stephen P. Galvin, District Attorney of the County of Merced, State of California.

Lyman E. Buzard, defendant in the above entitled action, demurs to the accusatory pleading on file herein on the following grounds:

1. That the facts stated do not constitute a public offense;
2. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution;
3. This court is without jurisdiction to proceed in this matter.

Dated: May 31, 1960.

[fol. 14]

Law Offices of C. Ray Robinson, By C. Ray Robinson, Attorneys for Defendant.

Points and Authorities: California Penal Code #1004 (4) and (5).

[fol. 15]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT
COUNTY OF MERCED, CALIFORNIA
Before Honorable John H. Mahoney, Judge Pro tem.
Violation of Section 4000 of the California
Vehicle Code

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

VS.

LYMAN BUZZARD, Defendant.

Transcript of Hearing—October 5, 1962

APPEARANCES:

Stephen Galvin, District Attorney of the County of Merced, appeared on behalf of the People.

The Law Offices of C. Ray Robinson by John Whiting, Esq., Robinson-Montgomery Building, Merced, California, appeared on behalf of the defendant.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Gentlemen, there seems to have been a mix up. I was informed by the Judicial Counsel to be here at 3:00 o'clock. I told them I would get down after a Preliminary that I had scheduled at 2:00 o'clock, if they so decided, and they said yes, and I had everything on my calendar for 3:00 o'clock this afternoon.

Mr. Galvin: Well, we won't hold you in contempt, your Honor.

The Court: I don't know whether I should pick that up and hold somebody else in contempt.

[fol. 16] Mr. Whiting: Do you have any witnesses?

Mr. Galvin: No, I called Mr. Cotton and he said as far as he knew, what you said was right. He didn't remember the details. He didn't remember who was over there, but he said the man had been in and had been registered and that there was a question about the \$118.00 or something license fee, and then it went on and he didn't know what happened after that. So pretty nearly anything that you would have to say regarding that is—

Mr. Whiting: I think what we will have to do in the case—are you familiar with the facts in the case?

The Court: I have just been handed the file. I am absolutely at a loss.

Mr. Whiting: The defendant was charged with violation of section 4000 of the Vehicle Code. Well,—

The Court: Registration, in other words?

Mr. Whiting: Yes, failing to register a 1959 Oldsmobile which he was, on the date of the citation, which was—

Mr. Galvin: Failure to register in California.

Mr. Whiting: We will, your Honor, waive at this time, any further reading of the complaint. The defendant has pled not guilty to a violation of this section. We will stipulate at this time that at the time the defendant was placed under arrest, or the time that he received the citation, that he was driving a vehicle which was not—

Mr. Galvin: Why don't we stipulate to the facts in the [fol. 17] Amended Complaint are true and then proceed.

Mr. Whiting: Yes, we can stipulate that the facts stated in the complaint are true, your Honor.

Mr. Galvin: That is the Amended Complaint.

Mr. Whiting: The Amended Complaint.

The Court: Issued a citation first, I presume?

Mr. Whiting: Yes.

Mr. Galvin: Pled not guilty and then we filed a complaint in the general, loose-type of complaint, and then finally we prepared a detailed complaint, setting out all the particulars covering this incident, and that is the Amended Complaint that is referred to.

Mr. Galvin: I would think that having the Amended Complaint and stipulating to the additional facts—

Mr. Whiting: Well, why don't we do this? You rest on this stipulation of fact and then we will put the defendant on the witness stand and take the rest of the facts from there?

Mr. Galvin: Perfectly proper, yes.

Mr. Whiting: O.K. Then, your Honor, at this stage of the proceedings, it is my understanding that Mr. Galvin has established his prima facie case, based upon our stipulation as to the truth of the facts contained in the Amended Criminal Complaint and at this time, we will call the defendant, Mr. Buzzard to the witness stand.

[fol. 18] LYMAN BUZZARD, defendant, examined as a witness on his own behalf, being duly sworn by the Court, testified as follows for

Direct examination.

By Mr. Whiting:

Q. Your name is Lyman Buzzard?

A. That is true.

Q. And Mr. Buzzard, your occupation is a Captain in the United States Air Force, is that correct?

A. That is right.

Q. And you reside here in the City of Atwater at Atwater, or at Castle Gardens, is that correct?

A. That is correct.

Q. Subject to the consent of Counsel, I am going to lead the witness in order to save time here?

Mr. Galvin: Sure.

By Mr. Whiting:

Q. Mr. Buzzard, it is true, is it not, that you have been a resident of the State of Washington since your birth, is that correct?

A. That is true.

Q. What city in Washington do you reside in now?

A. At the present time it is Langley, Washington.

Q. And where were you born in the State of Washington?

A. Seattle.

Q. Were you married in Washington?

A. No, I was married in Youngstown, Ohio.

[fol. 19] Q. And you vote in the State of Washington?

A. That is correct.

Q. And you voted at the last general election in the State of Washington?

A. Yes, by absentee ballot.

Q. Now you entered the U. S. Air Force in August of 1951, did you not?

A. Yes, that is right. Pardon me, it was June of 1951.

Q. June of 1951?

A. Yes.

Q. Now after your entering the Air Force—incidentally which State did you either enlist or were you brought into the Air Force?

A. I enlisted in Seattle, Washington.

Q. And after your entry into the Air Force, you were stationed in Lackland Air Force Base at San Antonio, Texas?

A. That is correct.

Q. That was during the year of 1951, was it?

A. Yes.

Q. And that same year also, you were stationed at Sheppard Air Force Base, Wichita Falls, Texas?

A. Yes.

Q. And at Lowery Air Force Base in Denver, Colorado? You went in 1952, is that correct? In the early part of 1952?

A. No, I was sent to Lowery, it was in the fall of '51.

[fol. 20] Q. That is correct. In September of 1951?

A. Yes.

Q. And then in February of 1952 you were transferred to Good Fellow Air Force Base at San Angelo, Texas?

A. That is correct.

Q. And that September, or that March of 1952 you went to Spence Air Base at Moultrie, Georgia?

A. That is correct.

Q. And following that, in September of 1952 you went to Enid, Oklahoma to Vance Air Force Base, is that correct?

A. That is correct.

Q. And then from there, in the early part of 1953 you were transferred to Randolph Air Force Base in San Antonio, Texas?

A. Yes.

Q. And then down to West Palm Beach Air Force Base at West Palm Beach, Florida in May of 1953?

A. Yes, correct.

Q. And then to Louisiana, Lake Charles Air Force Base at Lake Charles?

A. Yes.

Q. And that was in September of 1953, is that true?

A. Yes.

Q. And then you were placed on inactive duty, anyway, is that correct, in 1956?

A. That is correct.

[fol. 21] Q. And where did you return to live?

A. In Seattle, Washington.

Q. In other words, after you went on inactive duty, you returned to your home in Seattle?

A. Yes.

Q. And at that time were you married?

A. No, when I was released from active duty I was not.

Q. And you stayed in Seattle for how long?

A. Other than the period to go back to Youngstown to be married in September of '56, I was in Seattle from March of '56 to June of '57 when I was recalled.

Q. And you were married when?

A. In September of '56.

Q. Now after your marriage in September of '56, did you go back to Seattle?

A. Yes.

Q. And you and your wife resided in Seattle?

A. Yes.

Q. And then you were recalled into the service in what year?

A. June of 1957.

Q. And where were you sent?

A. Castle Air Force Base.

Q. And you have been permanently assigned to Castle Air Force Base ever since that time?

A. That is correct.

[fol. 22] Q. Now calling your attention to September 3rd of 1959, were you assigned to a school in Alabama?

A. That is true, Maxwell Air Force Base.

Q. And you received that assignment pursuant to regular orders from the Military, did you?

A. That is correct.

Q. And what was your purpose in going to that school?

A. To go to the Squadron Officers School which is located at Maxwell Air Force Base.

Q. And these were written orders that you received from the Military, is that correct?

A. That is correct.

Q. Now how long were you stationed at that school, at Maxwell Air Force Base?

A. From—I believe I arrived there on the day before Labor Day. I don't remember the date, but 1959. I arrived in Montgomery and I departed on the 19th of December of '59.

Q. Now when you went down there, did you know that you were coming back to Castle Air Force Base?

A. Yes, sir, yes, sir.

Q. I see. And this is—your stay in Montgomery, Alabama at Maxwell Air Force Base and going to school down there would this be what the Military would classify as temporary duty?

A. That is correct.

Q. TDY?

[fol. 23] A. Yes.

Q. What does that stand for?

A. Temporary duty.

Q. What does the "Y" stand for?

A. They take the "Y" out of duty.

Q. And did you take your wife down there with you?

A. Yes, sir.

Q. Now while you were in Montgomery, you purchased a vehicle, did you not?

A. That is correct.

Q. And what kind of car was that?

A. It was a 1959 Oldsmobile.

Q. An Oldsmobile 98.

A. That is correct.

Q. Now at the time that you purchased that car, did you comply to your knowledge with all registration laws of the State of Alabama?

A. Yes, sir, yes, sir.

Q. And you received documents in connection with that car, did you?

A. Yes.

Q. You received a conditional sales contract?

A. Yes.

Q. Did you buy it from a private person or did you buy it from—

A. From a dealer.

[fol. 24] Q. From a dealer?

A. Yes.

Q. In Montgomery, Alabama?

A. Yes, Capitol Motor Company.

Q. And at the time that you bought that car, did it have license plates on it?

A. Yes, sir, it had 1960 Alabama license plates.

Q. And those license plates, is it your understanding that they are issued in September of the previous year?

A. Yes, I believe their expiration date is the last day of September, with a 30 day grace period which would extend to October.

Q. Was that a new car?

A. It was the Oldsmobile of the President of the company there. It was his personal car. It was a used—

Q. Demonstrator?

A. It was a demonstrator, yes.

Q. Now after you left—then you left Alabama on or about the 1st of January, 1960, is that correct?

A. I departed there on the 19th of December and took a leave to go to Youngstown to visit my wife's parents during Christmas time, and we returned from Youngstown back to California.

Q. And you came back here to Castle Air Force Base, is that correct?

A. Yes.

[fol. 25] Q. And to your apartment here at Castle Gardens?

A. Yes, that is correct. We arrived back here, it was late in the afternoon of the 31st. It was New Year's Eve.

Q. 31st of—

A. December.

Q. Of December. All right. And then after you came back here, did you drive this car with these Alabama license plates here in California?

A. Yes.

Q. Now at any time from the date—after you arrived here on the 31st of 1959 up until the time you were stopped by a Highway Patrolman, had you taken that car to the State of Washington?

A. No, sir.

Q. You had not been to the State of Washington at all, is that correct?

A. No, sir.

The Court: I have the Amended Complaint is all.

Mr. Whiting: Here it is. I have it. Now calling your attention to the day of Friday, the 26th of February of 1960, at approximately 4:00 o'clock in the afternoon. Were you stopped by a highway patrolman?

A. Yes, sir, there was a—well, yes, sir.

Q. Where did that occur?

A. That occurred on Bellevue Road just outside of Castle Gardens. There was a road block there, set up by the State [fol. 26] Patrol.

Q. Now at that time did the officer explain to you why he had stopped you?

A. No, sir.

Q. He did not give you any citation at that time?

A. No.

Q. Did he tell you—did he ask you any questions about your license plates?

A. I can't exactly remember. He asked to see my driver's license and I showed him the California driver's license which I had obtained, oh, quite a time prior to that. Before I even went to Alabama, and I can't remember now whether there was any question. I know—I asked him the question, "What is the reason for my being stopped", and he said, "We were just"—I believe he said something to the effect, "We were just checking out of state license plates", but there was no reference to what the question might be or the problem might be.

Q. Now I am glad you mentioned the driver's license. You had a California driver's license?

A. Yes.

Q. Valid California driver's license?

A. Yes.

Q. And you also had an Alabama?

A. Yes, and a Washington State driver's license.

Q. You got the Alabama license while in Alabama?

[fol. 27] A. Yes.

Q. And am I correct that that State, even though you are on military duty there, if you are going to be driving there for any period of time, requires you to have a license?

A. I believe there is a similar Alabama law to the one that they have in California. However, the main reason that I obtained the Alabama driver's license was to have a driver's license to match the automobile plates, because some states I have run into trouble with having a driver's license from one state and plates from another, and you get in hot water if you happen to get stopped.

Q. It makes it inconvenient for you?

A. Yes.

Q. After you were stopped by this highway patrolman, were you called into an office at Castle Air Force Base?

A. No, sir.

Q. Well, when you were stopped, am I correct that you did not receive any citation?

A. No, sir, that citation didn't arrive until your office pressed the subject I believe it was almost a month or two later, or six weeks.

Q. Now did you have occasion to go to the Department of Motor Vehicles after that officer stopped you?

A. Yes.

Q. And how did you happen to go to the Department of Motor Vehicles?

[fol. 28] A. I received a call from the Provost Marshal, I don't remember his name at the time. He is not on the Base now. And he informed me that the State Patrol had submitted a list of names of people who were stopped in the road block to the Base, asking that the Base trace the home of record or residence of the various individuals to find out whether they were actually driving a car with plates of their home state or not, and he said, "We have information that you are a resident of Washington, and we have to submit the car to the State Patrol and I suggest that you get down there and register the car." I explained to him that the Vehicle Code that I had, the summary stated that I was—since I had been on duty in Alabama, that I had Alabama plates and the book said that I could keep those plates until the time that they expired unless I got my home state plates sooner, which I intended to get that summer, and he said, "Well, just to save any trouble", he said, "You better go down there to the Motor Vehicle Registration in Merced and check on it."

Q. Now this book you had read, was this book (indicating)?

A. Yes.

Q. Now you are familiar with this?

Mr. Galvin: Yes.

By Mr. Whiting:

Q. And the section you refer to was on page 68, Military Exemption. It says: "Members of the Armed Forces who own vehicles are permitted to drive them in California while displaying the license plates last issued to them by their [fol. 29] home state or by any state, territory, or country in which they were assigned for military duty. If the vehicle is of the commercial type, immediately consult the Department of Motor Vehicles about registration requirement." Note: ("This rule applies to both residents and non-residents in the forces.")

Now this is a book entitled "California Vehicle Code" summary which states on the front page that it was compiled and issued by the Department of Motor Vehicles, Robert McCarthy, Director, December of 1959.

A. That is correct.

Q. And this is the book that you referred to, and the section that I read was the section that you referred to when you had the conversation with the Provost Marshal?

A. Yes.

Q. Now incidentally, we will put this book in evidence as Defendant's first in order.

Mr. Galvin: No objection.

By Mr. Whiting:

Q. Now did you go to the Department of Motor Vehicles?

A. Yes, sir. I don't remember exactly the date that I went down there. It was within a week or ten days, if I remember right, of the time that the Provost Marshal called me. I should say a week or ten days from the time that I was stopped.

Q. All right.

[fol. 30] A. And I went down there and asked Mr. Cotton, who happened to be the man on duty, what the story was on this incident.

Q. Well, let me interrupt you there. Did you go down there for the purpose of registering your car?

A. Yes, sir.

Q. All right.

A. And Mr. Cotton said I would have to register the car, and I asked him about the summary code, and he said, "Well, that doesn't apply." He said, "Because you were on TDY" and he said, "Let me take the motor number et cetera" and he went out and took the motor number and filled out the necessary forms to register the car and he asked—he just said, "This will be a hundred and some odd dollars." I forget what it was.

Q. In other words, he asked you—I want this point. He made a demand upon you for a hundred—in excess of a hundred dollars, is that correct?

A. Yes.

Q. And the purpose of that, it was your understanding was a license fee for the registration of the car?

A. Yes, he had the fees and final figure up.

Q. Am I correct that you refused to pay at that time?

A. No, I didn't refuse to pay it. He said, "Do you want to pay it now", and I said, "I don't have the money in cash with me, will you accept a check" and he said, "No," [fol. 31] and it was late in the afternoon as I remember, and I said, "Well, I will come back tomorrow or the next day," and that was the last time that I had any dealings with Mr. Cotton down there because—you want me to continue?

Q. Yes.

A. Because when I came back out on the Base, I was disturbed about this vehicular code book and I asked him if I could see why the book—he had said that this book was not correct and he said, "Well, I don't have to show that to you," and so I started researching this and got some later books which said the same thing, and went out to the Base Provost Marshal's office to get their copy of the master code book, and I saw there in parentheses, it says "Except TDY and on leave", and I questioned the Base Legal Officer about it and it looked like I was going to have to register my car all right at that time. This was about two days after I had been down to the office. And Colonel Dysinger, the Base Commander had heard of this road block and the

problem I was having, through the Base Legal Office, and became a little disturbed about it and suggested before I take any further action, I go down and see C. Ray Robinson.

Q. Now first let's get to these things in evidence, I show you a document entitled California Highway Patrol Notice to Appear, and ask you if this is the citation that you received in the mail approximately a month or so after you were stopped?

[fol. 32] A. Yes, sir.

Q. And we will offer that.

Mr. Galvin: Tell me what the day is?

Mr. Whiting: Oh, on the citation it is written on the 25th of March, 1960. I assume that you received it a few days after the 25th of March, 1960?

A. Yes.

The Court: May I ask a question, clarifying the usual thing. Then you received a letter with this?

A. No, sir, I—yes, I did. Yes, I did.

The Court: You would, because the complaint would have been filed.

A. I believe I was issued a letter to appear in the Justice Court here in Atwater.

Mr. Whiting: Maybe we can pin the date down a little more.

A. It was rather late. I think that they had written the thing, but had not sent it on until C. Ray's office had pressed the thing, because I received all kinds of threats from the State Patrol that I was going to be arrested and my car was going to be impounded.

By Mr. Whiting:

Q. Would you tell me, is this the envelope in which you received the citation?

A. Yes, sir, it was from this Atwater Court. I have not received any other correspondence.

Q. For the record this is an envelope alleging sent out—
[fol. 33] The Court: I think I might be able to clarify that, too. When the patrol made up the complaint and mailed it to the court with this copy, with the original citation or court copy of the citation, then the court would notify the defendant in the matter.

Mr. Whiting: Right. In other words, I will introduce this letter, the envelope with a postmark of April 11, 1960, showing also a postmark or mark or notation on it of May 12th of 1960, and also incorrect address notation on the envelope. In the upper left hand corner of the envelope is "Judge Quinn Young, Atwater Judicial District Court."

A. Yes, they sent it to the Base for me and I don't have a box, and they sent it back.

The Court: You want this as Exhibit two?

Mr. Whiting: Yes.

By Mr. Whiting:

Q. Now thereafter did you appear in this matter and post bail?

A. Yes, sir.

Q. All right. And of course had pled not guilty to violation of section 4000 of the Vehicle Code?

A. Yes.

Q. I show you one other—well, we will get this in. I don't know—I wonder, Mr. Buzzard, if you have ever seen this document?

A. Yes, sir, that was issued at, I believe it was around [fol. 34] Christmas. It was during a holiday.

Q. Was this—

A. Out here on the Base.

Q. Before you were arrested?

A. Oh, no, sir. This was after.

Q. Subsequent. When you mentioned that you had looked for and you were doing some research out there and saw there was information subsequent which was consistent

with what you read in the Department of Motor Vehicles handbook, is this what you had reference to?

A. No, this had nothing to do with that. I happened to pick this up. They had a mandatory safety meeting at the Base here. It was the State Patrol passed out this information and I happened to cast my eye on it. I didn't recognize it for a minute and told Chuck Goff about it down there in C. Ray's office, and he asked that I bring it down to him.

Mr. Whiting: Can we stipulate that this goes in as defendant's next in order, which is a bulletin purportedly put out by the California Highway Patrol, concerning license requirements and regulations? Now was there any time that the Department of Motor Vehicles or Mr. Cotton offered to register your car without the necessity of your paying the \$100.00—in excess of \$100.00?

A. No, sir.

Q. And was it your understanding that the \$100.00, or the \$100.00 plus was a license fee?

[fol. 35] A. And a fine, both.

Q. And a fine, both?

A. Yes, penalties.

Q. Penalties?

A. Yes, that is right, I am sorry.

Q. And you of course refused to pay that and have refused to pay that since the time?

A. The original time I didn't refuse, I didn't have the money with me.

Q. But subsequent?

A. Yes, I have refused.

Cross examination.

By Mr. Galvin:

Q. Do you recall what the regular license fee was for the car that Cotton asked?

A. I can't say for sure, sir. Being that the car was still pretty new and the price I believe was somewhere in the vicinity of \$80.00.

Q. And the difference between that was based on penalties due to not having registered the car within a time?

A. Yes.

Q. Within 30 days after bringing it in the State. I see.

A. Yes, sir.

Q. You have in evidence a record of some type, your Exhibit "1" and "3", or at least "1". Did you have that [fol. 36] information—when did you first get the information that you did not have to register a vehicle that you had obtained in another state where you were on duty?

A. I had the booklet with me when I went to Alabama. I carried it in my previous car. I obtained the booklet when I obtained the driver's license in California, and I kept it in the car, and this came to my attention while I was in Alabama, over the license plates. Since the car has the '60 plates on, when I got back here I thought I had better look into it because I am liable to be stuck in California with that registration problem, and I glanced through the book and I felt, if there is no harm, I would wait until I went home on leave in the summer and get my Washington plates.

Q. Had you had a car prior to going to Alabama?

A. Yes.

Q. And did you drive to Alabama?

A. Yes.

Q. And in what State was that automobile registered?

A. Washington.

Q. Do you still have the Oldsmobile?

A. Yes.

Q. And what is its registration now?

A. Washington State.

Q. Oh, you have since registered in Washington. So that you went down to the Department of Motor Vehicles and saw Mr. Cotton at the suggestion of the authorities at [fol. 37] the Base?

A. Yes, sir.

Q. I see. And then you discussed registration and he explained in substance, or licensing, that it was going to cost you a certain fee and a certain penalty?

A. Well, a little more in explanation. He had filled out the numbers and taken the forms and got the motor number. He is not one to give much information, without being very official.

Q. And then you didn't—you had received the citation before going to see Cotton?

A. No, sir.

Q. You had received notice from the Base?

A. That is right, yes, sir.

Q. And it was after that you went to see Mr. Cotton and he told you what the fees and penalties would be, and you did not pay them and you received the citation, is that correct?

A. It was quite a while after that, yes.

Q. Well—

A. Yes, sir, it was after that particular time.

Q. That book that is People's Exhibit—Defendant's Exhibit "1", where did you get that, do you recall that?

A. I got it at the Merced Motor Vehicle office. This one that I have here is not the original one that I had. This was the latest one I could obtain at that time to show the basic paragraph had not changed. And I don't think it [fol. 38] has changed to this date.

Q. Did you run it out on the Alabama plates?

A. No, sir. You mean until they expired?

Q. Yes.

A. No.

Q. You registered it in—

A. Yes, I was—I went home that summer and registered the car in the State of Washington.

Mr. Galvin: I have nothing further.

By Mr. Whiting:

Q. After you get out of the service, is it your intention to return to the State of Washington?

A. Yes.

Mr. Whiting: That is all. The defense will rest, your Honor.

Mr. Galvin: We have nothing further, obviously.

STATEMENT BY COUNSEL FOR DEFENDANT

Mr. Whiting: So that the record is clear, we do want to make it clear that our position in this case, your Honor, is that the section 4000 as it was being applied by the Department of Motor Vehicles in seeking to extract a license fee from this defendant, and obviously was being applied at the time of the arrest was unconstitutional, violating various provisions of the Federal Constitution. The fact that the Federal Legislature had enacted laws which provided that a person in the military, while a resident of one state could not be—can not be taxed for a license fee in the state where he is assigned. The fact that he does not—he can not be [fol. 39] forced to become a resident of this state in which he is assigned, referring specifically to United States Code Annotated, Title 50, Section 574, that we take the position at this time in our arguing, your Honor, that perhaps the State of California had a right to require this defendant to register the vehicle here for the purpose of having a record of the ownership of the vehicle, but had no right to extract funds under the circumstances as it were, for the license fees or the penalties because of the fact that that would have been an attack on the defendant which would be in violation of the United States Constitution in violation of this section that I have referred to in the United States Code Annotated.

We also take the position that the time to apply this section—incidentally, in conjunction with other sections in the vehicle code, in the Taxation and Revenue Code, specifically sections 10751 et seq. of the Revenue and Taxation Code which is the code section that provides for a license fee, as well as section 6701 of the Vehicle Code which provides for an exemption from a license fee for certain persons in the military who are residents of other states except

when they purchase a car in another state under competent military orders, except where the military orders apply to temporary duty. We take the position that these sections are unconstitutional because of the fact that there is certainly discrimination between this defendant in this particular case as distinguished from a case where had he [fol. 40] gone to the State of Washington and registered it in that state, then he would not have been arrested, whereas in the case here he was, and we take the position that there is not a good political reason for distinguishing, and for this classification as between the case that I have cited in the defendant's case.

Therefore, to make our position clear, we say that to apply—that this arrest was unconstitutional because of the fact that under the United States Constitution, speaking through this section in the United States Code Annotated, and the war power clause of the United States Constitution, the supremacy of the United States laws and the equal protection of the United States Constitutional laws, this defendant did not have to pay and should not have to pay the license fee which the Department of Motor Vehicles was requiring prior to his being able to register his car to meet the provisions of section 4000. Now I think I have made myself clear enough for the record so that the Constitutional question can be raised on either side.

STATEMENT BY COUNSEL FOR PLAINTIFF

Mr. Galvin: I would just want to call the court's attention to our position, and also to the history of this particular case. This same issue has been—this same issue with modifications, has been ruled on this particular question by the State Appellate Court. I think of course, your Honor, will probably want a brief or something on this later, but just to tell you what has happened, because I know that you are not familiar with it, or at least you indicated that you are not.

The Court: No, I don't know the background of the case at all.

Mr. Galvin: Initially we filed this Amended Complaint, the facts of which have been stipulated to, which the defendant demurred, raising pretty substantially the same points, and then the demurrer was overruled and we were to proceed, and the defendant then sought in the Supreme Court a Writ of Prohibition to prevent the court from proceeding on substantially the same grounds. We demurred to the petition for the Writ of Prohibition, which demurrer was sustained by the court, in effect saying "Yes, let the Justice Court proceed", and the defendant appealed to the Appellate Court.

The Court: You are talking about the District Court of Appeals?

Mr. Galvin: Yes, the District Court of Appeals in effect sustains the Superior Court which had said go ahead with the trial but in that opinion, and I am sure it will be made available of course, they said—well, whether—there is no showing that this man ever did make an effort to register the vehicle. They didn't say that if he showed he had made an effort to register the vehicle that they would reach a different decision, although, when your Honor reached the opinion, there is certainly an indication along that line. So that is why it is back, and this is why particularly the additional evidence that Counsel has introduced in here [fol. 42] today. Now it is our position that if that opinion had said, "With that additional evidence then the case is out", we would—there would not be any problem. I feel that the points that Counsel is raising regarding the constitutionality of the provision and the precedence of the Federal section he cites, I don't feel that—they were argued and presented to the Appellate Court and the Appellate Court did not reach the same conclusion that Counsel is reaching but there is this additional element. The point is that so far as section 6701 of the Vehicle Code is concerned, it specifically eliminates a person from nonregistration, a person that had gone on and picked up a car on temporary duty—and this defendant was on temporary duty. If he was on permanent duty, I agree, he doesn't have to register the car, but the code provision eliminates him from the

privilege of nonregistration, and that is what Counsel indicates is unconstitutional, and the classification of being in another state on temporary duty and in another state on permanent duty is—there is nothing realistic in it, and so that is briefly what our position is, that this is the same case that—or the same principles apply as did on the other.

The Court: Well, I will ask you to brief it, Counsel, so I can get the authorities down and check them out myself.

[fol. 43] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 44] [File endorsement omitted]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT
COUNTY OF MERCED, CALIFORNIA

No. 5522

No. 28647

LYMAN E. BUZARD, Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent.

NOTICE OF APPEAL—Filed January 22, 1963

To the Honorable Pat Hallford, District Attorney for the County of Merced, State of California, and to the Honorable Stanley Mosk, Attorney General of the State of California.

Please Take Notice that the Petitioner Lyman E. Buzard, hereby appeals to the Superior Court of the State of California in and for the County of Merced from the Judgment of Conviction entered on the above entitled matter on January 14, 1963.

Dated: January 21, 1963.

Law Offices of C. Ray Robinson, By John E. Whiting, Attorney(s) for Petitioner.

[fol. 45]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

No. 5522

No. 28647

LYMAN E. BUZARD, Petitioner,

vs.

THE JUSTICE COURT OF THE ATWATER JUDICIAL DISTRICT,
COUNTY OF MERCED, STATE OF CALIFORNIA, AND THE HON-
ORABLE QUINN YOUNG, JUDGE OF THE SAID COURT, Respon-
dents,

THE PEOPLE OF THE STATE OF CALIFORNIA and THE HONOR-
ABLE STEPHEN P. GALVIN, DISTRICT ATTORNEY FOR THE
COUNTY OF MERCED, CALIFORNIA, Real Parties in Interest.

NOTICE OF APPEAL—September 27, 1960

To the Clerk of the Above Court, and to the Justice Court of the Atwater Judicial District, County of Merced, State of California, and The Honorable Quinn Young, Judge of the Said Court, and to The People of the State of California and The Honorable Stephen P. Galvin, District Attorney for the County of Merced, California, and to The [fol. 46] Honorable Stanley Mosk, Attorney General of the State of California:

Please Take Notice that the petitioner, Lyman E. Buzard, hereby appeals to the District Court of Appeal of the State of California, Third Appellate District, from the judgment entered in this action against said petitioner and in favor of the respondents and the real parties in interest.

Dated: September 27, 1960.

Law Offices of C. Ray Robinson, By C. Ray Robinson, Attorneys for Petitioner.

[fol. 47]

[File endorsement omitted]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

No. 5522

No. 28647

STIPULATION REGARDING FILING APPEAL
STATEMENT—June 25, 1963

It being in the interest of justice and in the interests of both parties hereto, it is stipulated and agreed that defendant herein may file a proposed statement on appeal, and file the trial court transcript herein as stating the oral evidence to be considered herein, within thirty days from the date hereof, and that such statement may be deemed and considered to be filed within the time specified and in accordance with the Rules on Appeal applicable to the appeal herein.

Dated: June 25, 1963.

[fol. 48] Pat Hallford, District Attorney.

Law Offices of C. Ray Robinson, By John E. Whiting, Attorneys for Defendant.

So Ordered:

Donald R. Fretz, Judge of the Superior Court.

[fol. 49]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

No. 5522

No. 28647

STATEMENT ON APPEAL—July 11, 1963

Defendant hereby files his statement on appeal herein, as follows:

A. Appellant hereby gives notice that he intends to file, files herewith, and makes the same a part of this statement, reporter's transcript of the evidence and proceedings herein at the trial hereof on October 5, 1962.

B. As grounds for appeal, defendant states: The judgment of conviction herein was and is erroneous and an unconstitutional application and enforcement of the provisions of the Revenue and Taxation Code, Sections 10751, et seq., and Vehicle Code, Section 4000 and Sections 6700, et seq., and that such provisions, as applied here, are unconstitutional, and that defendant herein has been denied equal protection of law. Defendant states as further [fol. 50] grounds that the Court's action here, and the statutes applied, are in contravention of the Soldiers' and Sailors' Relief Act, and that the California statute, in its use of the phrase "temporary duty", is vague and ambiguous and therefore unenforceable.

Dated: July 11, 1963.

Law Offices of C. Ray Robinson, By Jonathan H.
Rowell, Attorneys for Defendant.

[fol. 51]

[File endorsement omitted]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCER

No. 5522

DOCUMENTS ON APPEAL FORWARDED HEREWITH—

Filed August 30, 1963

To: The Clerk of the Superior Court, County of Merced,
State of California

Forwarded herewith is record on Appeal pursuant to
requirements of Rule #183 of Rules on Appeal in the Jus-
tice Courts on Criminal Cases.

The following documents are included:

1. The complaint and citation #G649251
 2. The Amended Complaint
 3. Demurrer to Accusatory Pleading
 4. Notice of Appeal
 5. Official Receipt #25729 and copy of letter to John C.
Whiting, Attorney
 6. Notice of Appeal
 7. Stipulation Regarding Filing Appeal Statement.
 8. Certified Copy of the Docket Entry 1232-D
- [fol. 52] 9. Exhibits 1, 2 and 3.

I, Elmer L. Libby, Certify that the above listed docu-
ments constitutes the records on file in the office of the
Atwater Justice Court, State of California.

By: Elmer L. Libby, Judge, Atwater Justice Court,
Atwater Judicial District, County of Merced, State
of California.

[fol. 53]

IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MERCER
No. 5522

THE PEOPLE OF THE STATE OF CALIFORNIA,

VS.

LYMAN E. BUZARD, Defendant.

Present: Hon. Gregory P. Maushart, Judge.

ORDER CONTINUING HEARING—September 3, 1963

At the request of counsel for defendant, the Court continues the above hearing to Tuesday, September 10, 1963 at 9:30 A.M.

[fol. 54]

IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MERCER
No. 5522

Present: Hon. Gregory P. Maushart, Judge.

ORDER TRANSFERRING CASE—September 10, 1963

After reviewing record, the Court orders case transferred to the District Court of Appeal.

[fol. 55]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCER

No. 5522

[Title omitted]

Present: Hon. Gregory P. Maushart, Judge.

ORDER VACATING ORDER OF TRANSFERRAL—

September 16, 1963

The Court vacates its order heretofore made on September 10, 1963 and case is submitted to the Court for decision. The Court orders matter stand submitted.

[fol. 56]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCER

No. 5522

[Title omitted]

JUDGE'S CERTIFICATE SETTLING RECORD—December 27, 1963

The foregoing transcript consisting of 26 pages in one volume, containing the records in accordance with the Rules on Appeal, in the above-entitled action, having been presented to me within the time allowed by law, is true and correct and is hereby allowed and settled.

Dated: December 27, 1963.

Gregory P. Maushart, Judge of the Superior Court,
In and for the County of Merced, State of California.

[fol. 57] Certificate of Service (omitted in printing).

[fol. 58] [File endorsement omitted]

IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA
FIFTH APPELLATE DISTRICT
5 Crim. No. 103
(5 Misc. No. 44)

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff & Respondent,

vs.

LYMAN E. BUZARD, Defendant & Appellant.

ORDER TRANSFERRING CASE FROM SUPERIOR COURT TO
DISTRICT COURT OF APPEAL—January 7, 1964

By the Court:

The Superior Court of Merced County having certified that a transfer of the appeal in the above entitled action appears necessary to settle important questions of law, and good cause appearing therefor, the appeal from the Justice Court of the Atwater Judicial District, County of Merced, State of California, now pending in the Superior Court of the County of Merced and numbered 5522 therein, is hereby transferred to the Fifth District Court of Appeal.

The appeal is calendared for oral argument before this court on Tuesday, March 3, 1964, at 10 a.m. Briefs shall be filed in accordance with the provisions of Rule 65 of California Rules of Court. The defendant, Lyman E. Buzard, is hereby designated as appellant for the purpose of filing briefs.

Dated January 7, 1964.

Conley, P.J.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 59]

IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA
FIFTH APPELLATE DISTRICT
5 Crim. No. 103

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff & Respondent,

vs.

LYMAN E. BUZARD, Defendant & Appellant.

OPINION—Filed April 21, 1964

Appeal from a judgment of the Justice Court of the Atwater Judicial District, Merced County. John H. Mahoney, Judge. Affirmed.

C. Ray Robinson and Jonathan H. Rowell for Defendant and Appellant.

Stanley Mosk, Attorney General, Doris H. Maier, Assistant Attorney General, and Edsel W. Naws, Deputy Attorney General, for Plaintiff and Respondent.

Appellant, an officer in the United States Air Force, has been permanently stationed at Castle Air Force Base, Merced County, California, since June 1957. He was assigned to temporary duty at Squadron Officer's School, Maxwell Air Force Base, Montgomery, Alabama, on September 3, 1959, and returned to Castle Field on December 19, 1959. On October 30, 1959, appellant purchased a used car in Montgomery, which he registered in his name, and upon paying a license fee obtained Alabama license plates which were valid in Alabama until September 30, 1960. He drove the car to Merced, California, and used it as his sole means of transportation, including commuting from his home to Castle Field.

[fol. 60] Appellant is a resident of the State of Washington and has maintained his domicile in that state at all times. However, he neither registered the vehicle there nor in the State of California. On February 26, 1960, he was arrested by a California Highway Patrol Officer and charged with violation of Vehicle Code section 4000, which provides:

"No person shall drive, move, or leave standing any motor vehicle, trailer, semi-trailer, pole or pipe dolly, or auxiliary dolly upon a highway unless it is registered and the appropriate fees have been paid under this code."

Appellant sought a writ of prohibition to prevent the Justice Court of the Atwater Judicial District, Merced County, California, from proceeding with the trial of his case. This court denied the writ. Subsequently appellant was tried and found guilty of violation of Vehicle Code section 4000, and this appeal followed.

It is necessary to keep in mind from the outset that the license fee here involved is not a personal property tax. In *Ingels v. Riley*, 5 Cal.2d 154, the Supreme Court specifically held at page 159, "... we have no hesitancy in declaring that the charge involved is one imposed on the owners of motor vehicles for the privilege of using the highways of the state and is not, in nature, a property tax."

Appellant first contends that he is exempt from the provisions of section 4000, Vehicle Code, by reason of section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C.A. Appendix, §574).

Section 574 is in two parts. Part (1) provides generally that personal property shall not be deemed to be located or present in or to have a situs for taxation in the state, political subdivision or district in which military personnel are serving, provided they have not established domicile therein. However, part (2) treats of motor vehicle licenses, fees, or excises specifically, by providing that:

[fol. 61] "When used in this section, (a) the term 'personal property' shall include tangible and intangible

property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia *of which the person is a resident or in which he is domiciled has been paid.*" (Emphasis added.)

Appellant leans heavily upon the case of *Dameron v. Brodhead*, 345 U.S. 322 [73 S.Ct. 721], in fact it is the only case cited in his opening brief, but it is not applicable since it is concerned with a tax on furniture and comes within part (1) of section 574.

If the owner-serviceman has registered his motor vehicle in his state of domicile or paid the license fee in that state, it is clear that he cannot be made to register it also in the state in which he is permanently stationed. In *Woodroffe v. Village of Park Forest*, 107 F.Supp. 906, domiciliary taxes or license fees had been paid by the serviceman, and the court there held that the state in which he was on active duty could not also charge the serviceman a vehicle license tax. On the other hand, in *Whiting v. City of Portsmouth*, 118 S.E.2d 505, the facts were comparable to those before us, in that the serviceman had not registered his vehicle or paid any license tax or other fee in his state of domicile, and the court held that he must therefore pay the vehicle license fee required by the state in which he was permanently stationed.

Appellant tacitly admits the inapplicability of *Dameron* and part (1) of section 574 of the Soldiers' and Sailors' Civil Relief Act by arguing that he has complied with part (2) of section 574. The gist of his argument is that his domicile is in the State of Washington; that the State of Washington requires no vehicle registration or payment of fee unless the vehicle is driven upon the highways of that State; that he has not driven on the highways in Washington; [fol. 62] therefore no license can be required by the State of California.

Appellant overlooks the wording of part (2) of section 574, which exempts a serviceman from paying an automobile license or registration fee in the state of his active duty upon the express condition that "the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled *has been paid.*" (Emphasis added.)

Since appellant has not paid the license fee in the State of Washington, he has not complied with part (2), so that the Soldiers' and Sailors' Civil Relief Act does not exempt him from the California registration requirements. We hasten to acknowledge that the foregoing construction is both narrow and literal. Other things being equal, in deference to the spirit of the Soldiers' and Sailors' Civil Relief Act, we would be inclined to use a more liberal approach in our interpretation of part (2) of section 574. However, public safety dictates a strict construction, since if we were to adopt appellant's argument it would mean that a serviceman from the State of Washington stationed in California for a number of years (appellant has been here over six years) could purchase a new car each year and never register a single vehicle in California so long as he did not drive in his home state. A car unlicensed or ineffectively licensed is not only tempting to the car thief, but it becomes a public hazard in the event of an accident. We emphasize the "hit-and-run accident" wherein witnesses almost instinctively look for the license plate on the hit-run car.

The Supreme Court noted, in *Stoddart v. Peirce*, 53 Cal.2d 105, at page 117, that the vehicle registration statutes were adopted "for the purpose of protecting innocent purchasers, and to afford identification of vehicles and of persons responsible in cases of accident and injury." That registration [fol. 63] is important in criminal cases involving stolen cars was noted by the court in *People v. Galceran*, 178 Cal. App.2d 312, 316.

These diverse reasons for requiring the registration of vehicles driven upon the highways of California serve to point up that the licensing requirement is an exercise of

the police power of the state, as well as a use tax for the privilege of using the highways.

Appellant also asserts that he is being denied equal protection of the law since Vehicle Code section 6701 exempts certain military personnel, but not him, from the provisions of section 4000. The exemption specified in section 6701, insofar as here pertinent, provides:

"Any member of the Armed Forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty."

We find nothing discriminatory in the section; to the contrary, the reason for the distinction to which appellant points is quite evident. Title to a vehicle registered to a serviceman in the state of his domicile or in the state in which he is on permanent duty, can be traced readily. This is not true where the serviceman purchases a car while temporarily in another state, and brings it into California. Since he is neither permanently stationed nor domiciled in the state of purchase, it is difficult to trace the car or its ownership in the event of an accident, a theft, or a sale.

Next, appellant contends he is being discriminated against because section 6705 provides that any discharged service person who enters California for the purpose of [fol. 64] establishing or re-establishing residence or accepting gainful employment following his discharge from the Armed Services, may operate his vehicle until the current license expires. Appellant argues that the discrimination

stems from the failure of section 6705 to exempt military personnel still on active duty. Patently, there is a valid distinction between discharged service personnel or returnees entering California, on the one hand, and military personnel on active duty in California but domiciled in another state, on the other. Furthermore, if appellant's argument were correct, all veterans' benefit acts would be unconstitutional, since military personnel on active duty are not entitled to receive the many benefits accorded dischargees.

The differences between classifications mentioned in both sections 6701 and 6705 of the Vehicle Code clearly are based upon valid distinctions. The Supreme Court discussed the question of statutory classification in the light of constitutional requirements in *Bilyeu v. State Employees' Retirement System*, 58 Cal.2d 618, and said, at page 623:

"There is no constitutional requirement of uniform treatment, but only that there be a reasonable basis for each classification. In *Sacramento Mun. Util. Dist. v. Pacific Gas & Elec. Co.*, 20 Cal.2d 684 [128 P.2d 529], we said at page 693: 'Wide discretion is vested in the Legislature in making the classification and every presumption is in favor of the validity of the statute; the decision of the Legislature as to what is a sufficient distinction to warrant the classification will not be overthrown by the courts unless it is palpably arbitrary and beyond rational doubt erroneous. [Citations.] A distinction in legislation is not arbitrary if any set of facts reasonably can be conceived that would sustain it.' (See also *State of California v. Industrial Acc. Com.*, 48 Cal.2d 365, 371 [310 P.2d 71].)"

(Accord: *City of Walnut Creek v. Silveira*, 47 Cal.2d 804, 811.)

Appellant's final contention is that the phrase "temporary duty" is vague and ambiguous, and therefore unenforceable. Appellant points to Webster's Dictionary, which defines "temporary" as "lasting for a time only; ephemeral; [fol. 65] transitory." We find that Bouvier's Law Diction-

ary, third revised edition, defines "temporary" as "that which is to last for a limited time." These definitions, when applied to military duty, seem sufficiently clear to enable a person of ordinary intelligence to understand what temporary duty means. If there could be a doubt, it would be dispelled by looking up the entire term, not the isolated words, in Webster's Third New International Dictionary, unabridged, where the term is defined thus: "temporary duty n: military service away from one's assigned organization usu. for a limited period of time." Certainly the term is clear enough to come within the rationale of *Kershaw v. Dept. Alcoholic Bev. Control*, 155 Cal.App.2d 544, wherein the court said, at page 549:

" " . . . [T]he Constitution does not require impossible standards"; all that is required is that the language "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices . . ." *United States v. Petrillo*, 332 U.S. 1, 7-8 [67 S.Ct. 1538, 91 L.Ed. 1877, 1883]. . . . " . . . That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. . . . " "

That courts will, if possible, construe statutes so as to avoid absurd applications and to uphold their validity, is well settled. (*In re Cregler*, 56 Cal.2d 308, 312; *Takahashi v. Fish & Game Com.*, 30 Cal.2d 719, 728.)

The judgment is affirmed.

Stone, J.

We Concur:

Conley, P.J.

Brown (R. M.), J.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 66]

[File endorsement omitted]

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

Crim. 8013

THE PEOPLE, Plaintiff and Respondent,

v.

LYMAN E. BUZARD, Defendant and Appellant.

OPINION—Filed October 8, 1964

Lyman E. Buzard appeals from a judgment following his conviction of a violation of section 4000 of the Vehicle Code, a misdemeanor.¹ His attempt by way of prohibition to foreclose the instant proceedings was unsuccessful. (Buzard v. Justice Court, 198 Cal.App.2d 814.)

Defendant is an officer in the United States Air Force. At all times herein pertinent he was a resident of the State of Washington and was stationed at Castle Air Force Base in Merced County, California. Between September 3 and December 19, 1959, he was temporarily assigned to duty for military training at Maxwell Air Force Base in Alabama. While there he purchased an automobile, which he [fol. 67] registered in that state in his name, and obtained Alabama license plates valid through September 30, 1960.

On defendant's return to Castle Air Force Base he drove his automobile from Alabama and has regularly used it in California since that time. While so using it he was stopped by a highway patrol officer and advised that the vehicle was required to be registered in California. He thereafter attempted to register the automobile but was informed by

¹ Section 4000 of the Vehicle Code provided in part at the time of defendant's arrest: "No person shall drive . . . any motor vehicle . . . upon a highway unless it is registered and the appropriate fees have been paid under this code."

an official of the Department of Motor Vehicles that he could not do so without first making a payment in excess of \$100 in fees and penalties. He refused to make the demanded payment and his arrest under section 4000 followed on April 11, 1960.

Defendant's refusal to make payment of the fees and penalties and his defense against the instant charges are based on the contention that section 4000, insofar as it required the payment of fees and penalties, did not apply to him because of the Soldiers' and Sailors' Civil Relief Act of 1940. (50 U.S.C.A. App., §574.) That act provides in section 574, subdivision (1) that "the personal property" of a serviceman "for purposes of taxation" shall not be deemed to have a situs in any state of which he is not a resident. In subdivision (2) automobiles are included as "personal property" within the meaning of the statute and [fol. 68] the term "taxation" is applied to automobile licenses, fees and excises "*Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."²

The applicable statute of defendant's domiciliary state provides: "it shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display number plates. . . ." (Rev. Code of Wash., § 46.16.010.) Prior to his arrest defendant did not drive his automobile into or otherwise enter the State of Washington after the purchase of the vehicle, nor did he register the automobile there.³

Defendant does not contend that California may not, as an exercise of its police power, require him to register his automobile. In fact, his attempt to register the vehicle

² Section 574 was amended in 1962 by Public Law 87-771 in a manner not here pertinent.

³ Following the arrest, however, defendant registered the automobile in accordance with the Washington statute when he first drove the automobile into that state.

independently of the payment of fees and penalties was frustrated by the department. Defendant's position is simply that the Soldiers' and Sailors' Civil Relief Act of 1940 (hereinafter the Relief Act) prohibits the collection of such [fol. 69] fees as an incident to a proper exercise of the police power or otherwise. As a consequence of the narrow question thus raised by the defendant, contentions which look to the purpose of registration in furtherance of proper law enforcement and administration fail to address themselves to the issue.

Defendant urges that he was not required to obtain a vehicle license and plates by his domiciliary state except as a prerequisite to the operation of his vehicle "over and along a public highway" of that state; that he has not driven his vehicle on such public highways; that, accordingly, no license charges or registration fees became due; that he has satisfied all licensing and registration obligations which that state required of him, and that he has likewise satisfied the proviso of the Relief Act. The argument meets the literal and commonsense meaning of the pertinent statutory provisions.

We are urged by the People to follow the opinion of the Supreme Court of Appeals of Virginia, wherein a city of that state was held to be entitled under the Relief Act to collect an additional vehicular licensing fee from a serviceman who had voluntarily registered and licensed his automobile in that state although claiming Colorado as his domicile. (*Whiting v. City of Portsmouth*, 118 S.E.2d 505.) But it does not appear from the opinion in that case [fol. 70] whether the serviceman was *required* and had failed to pay fees in Colorado. Thus the issue herein raised was not considered or resolved by the Virginia court.

We cannot, as is urged, conclude that subdivision (2) is intended to work to the serviceman's advantage only where a charge has been made by and paid to his domiciliary state. The statute is not couched in terms which flatly require the serviceman to have paid a fee, but rather in terms which accord to him the benefit when charges "required by the State" have been paid. These are the only charges

which he must pay and when there are no charges made there must likewise be no *requirement* that he pay them. Any other conclusion would lead us to the very results which the Relief Act, by its purpose, seeks to avoid. If, for instance, California may exact the instant charges from defendant, then so may any other state into which he brings his vehicle until such time as he enters his domiciliary state and pays the fees there required for the first time. Such a narrow construction would frustrate the obvious beneficent purpose of the act and fail to heed the direction of the Supreme Court that "The Act must be read with an eye friendly to those who dropped their affairs to answer their country's call." (*Le Maistre v. Leffers*, 333 U.S. 1, 6; see also *Plesha v. United States*, 227 F.2d 624.)

[fol. 71] It is further complained that the foregoing construction of the Relief Act permits a serviceman to escape the payment of fee altogether. The complaint is fairly answered by the Supreme Court in *Dameron v. Brodhead*, 345 U.S. 322, where the court was confronted by an attempt of the City of Denver to assess a personal property tax on a serviceman's furniture. The city argued that the Relief Act did not apply because the state of domicile did not impose any personal property taxes on the furniture. The court rejected this contention, saying at page 326: "The short answer to the argument that it [the Relief Act] therefore only applies where multiple taxation is a real possibility is that the plain words of the statute do not say so. . . . There is no suggestion that the state of original residence must have imposed a property tax. . . . In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders."

Although the court in *Dameron* had before it a question involving the taxation of personal property, never the less the Relief Act expressly includes within the purview of sec-

[fol. 72] tion 574 the licensing of automobiles as taxation of personal property. It is true that automobiles are dealt with separately in subdivision (2) but the different treatment is only in respect to the manner in which vehicles may qualify to be treated as other personal property, and where it appears that the serviceman has paid such charges as may have been assessed by his domiciliary state the language of the statute leaves no room for different treatment insofar as tax or other charges are concerned. As the *Dameron* case cannot be distinguished in any material respect it follows that if the domiciliary state chooses not to exact a vehicular registration or licensing charge from its residents the prohibition against other states from doing so would appear to be well within the intent and purpose of the Relief Act.

It is thus manifest that defendant was not subject to those provisions of section 4000 of the Vehicle Code requiring the payment of fees and penalties, and that his conviction thereunder is improper. In view of the foregoing it is not necessary that we determine the merit, if any, in defendant's further contention that the failure to exempt [fol. 73] him from registration under other statutory provisions is a denial of the equal protection of the laws. (Veh. Code, § 6701.)

The judgment is reversed.

Peek, J.

We Concur:

Traynor, C.J.

McComb, J.

Peters, J.

Tobriner, J.

*Schauer, J.

*Dooling, J.

* Retired Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

[fol. 74] [File endorsement omitted]

Order Due
November 6, 1964

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

Crim. No. 8013

[Title omitted]

Mosk, J., did not participate.

ORDER DENYING REHEARING—Filed November 4, 1964

Respondent's petition for rehearing Denied.

Traynor, Chief Justice.

[fol. 75] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 76]

SUPREME COURT OF THE UNITED STATES

No. 803, October Term, 1964

CALIFORNIA, Petitioner,

v.

LYMAN E. BUZARD.

ORDER ALLOWING CERTIORARI—March 8, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 632.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office-Supreme Court,
FILED

JAN 2 1965

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCT. TERM, 1964

No. [REDACTED] 40

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

LYMAN E. BUZARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF
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IN THE
SUPREME COURT OF THE UNITED STATES

OCT. TERM, 1964

No. ---

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

LYMAN E. BUZARD,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF
CALIFORNIA**

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California, entered in the above entitled case on October 8, 1964.

CITATIONS TO OPINIONS BELOW

The opinion of the California Supreme Court, printed in Appendix A hereto, is reported in 61 A.C. 927, 40 Cal.Rptr. 681.

The matter was also reviewed by the District Court of Appeal in and for the Fifth Appellate District on appeal from the denial of a writ of prohibition. This opinion is reported as *Buzard v. Justice Court*, 198 Cal.App.2d 814, 18 Cal.Rptr. 348.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(3).

QUESTION PRESENTED

The question presented involves an interpretation of the Soldiers' and Sailors' Civil Relief Act of 1940 (U.S.C.A. Title 50 (Appendix) section 574).

In general terms, the question is whether a non-resident serviceman is authorized to operate his motor vehicle in the State of California without the payment of fees thereon where the motor vehicle fees imposed by the state of his residence (Washington) have not been paid.

In more specific terms the question is whether the word "required" in the Relief Act as construed in the light of the Washington State statute prohibiting the driving of a vehicle on a public highway until appropriate fees have been paid, operates to create an exemption where, as here, the vehicle has not been driven in the state of residence.

STATUTES INVOLVED

The federal statute involved is Soldiers' and Sailors' Civil Relief Act of 1940 (U.S.C.A. Title 50 (Appendix) section 574), which is printed in Appendix B.

The Washington State statute involved is Revised Code of Washington, section 46.16.010, which is printed in Appendix C.

The California statutes involved are sections 6701 and 4000 of the California Vehicle Code, which are printed in Appendices D and E.

STATEMENT

A. Statement of the Case

An amended complaint was filed May 31, 1960, in the Justice Court of the Atwater Judicial District, County of Merced, State of California, charging respondent with a violation of section 4000 of the Vehicle Code of the State of California, in that respondent on or about February 26, 1960, did wilfully and unlawfully drive a motor vehicle upon a highway without said vehicle being registered in the State of California and without having paid the appropriate California fees.

Trial was had by the court without a jury. Judgment was entered finding respondent guilty as charged. A fine of \$50 was imposed, the judgment being suspended and the respondent placed on probation for six months. Respondent filed his notice of appeal to the Superior Court, County of Merced, from the judgment of conviction on January 22, 1963.

Pursuant to California Rules of Court, section 62, et seq., the District Court of Appeal of the State of California in and for the Fifth Appellate District issued its order on January 7, 1964, transferring the appeal to its jurisdiction. The District Court of Appeal rendered its decision on April 21, 1964, affirming the judgment of conviction.

The California Supreme Court on June 16, 1964, acting upon the timely petition of respondent Buzard granted a hearing in the case. The Supreme Court rendered its decision on October 8, 1964, reversing the judgment of conviction. It is this decision that the petitioner, the State of California, seeks to have reviewed by this petition for certiorari.

The prior history of the case is that on June 1, 1960, respondent Buzard filed a petition for a writ of prohibition in the Superior Court of California, County of Merced, to restrain the Justice Court from proceeding to hear the charges of a violation of section 4000 of the California Vehicle Code. The Superior Court on August 2, 1960, denied the petition for a writ of prohibition. Respondent Buzard filed notice of appeal on September 27, 1960. On January 8, 1962, the District Court of Appeal in and for the Fifth Appellate District entered its order affirming the judgment of the Merced Superior Court, this decision is reported as *Buzard v. Justice Court*, 198 Cal.App.2d 814, 18 Cal.Rptr. 348.

B. Statement of the Facts ¹

The material facts are not in dispute. It was stipulated by counsel for respondent and the District Attorney at the time of trial in the Justice Court that the facts set forth in the amended complaint were

¹ The within statement is substantially identical to that recited by the California Supreme Court in its decision.

true. In addition, respondent Buzard testified (RT 4).² The stipulation and the testimony of respondent Buzard show the following:

Respondent Buzard is an officer in the United States Air Force and his permanent duty station is Castle Air Force Base situated in the County of Merced, State of California (RT 4). Respondent is a resident of the State of Washington (RT 4).

Respondent left the service in March 1956, having been on active duty since June 1951 (RT 5,6). He was recalled to active duty in June 1957 and assigned to Castle Air Force Base, such station being his permanent duty station (RT 7). On September 3, 1959, he was detailed to a squadron officers' school in Maxwell, Alabama, on temporary duty for approximately four months, returning to his permanent duty station at Castle Air Force Base in January 1960, where he has since been stationed (RT 7,8).

While in the State of Alabama on temporary duty, respondent purchased a 1959 model Oldsmobile on October 30, 1959. The car was registered in Alabama and all necessary fees paid by the vendor at the time of sale. Alabama license plates were issued and were valid in that state until September 30, 1960.

Respondent drove the Oldsmobile to California after his temporary duty in Alabama ended. During the times here in question, the vehicle had never been operated in the State of Washington and was never

² RT refers to Reporter's Transcript on appeal to the California Supreme Court.

registered and fees paid thereon in that state.

The testimony of respondent Buzard shows that he was stopped by the California Highway Patrol on or about February 26, 1960, the purpose being to check out-of-state auto licenses (RT 12); that following consultation with the Castle Air Force Base Provost Marshal, respondent appeared at an office of the Department of Motor Vehicles and for the purpose of discussing registration of his vehicle and the payment of fees (RT 15); that he was informed by an employee of the Department of Motor Vehicles that it was necessary for him to register the vehicle and to pay the appropriate license fees which were in excess of \$100 (RT 16); that the requested fees were not paid; that thereafter a citation and complaint issued charging a violation of section 4000 of the Vehicle Code; and that during the summer of 1960, respondent went to the State of Washington and registered his vehicle in that state (RT 24).

C. Reasons for Granting the Writ

The California Supreme Court has held that respondent Buzard is exempt from the payment of motor vehicle fees of this State under the Relief Act although admittedly no motor vehicle fees have been paid to his state of residence, the State of Washington. The California court reaches this conclusion as the result of its interpretation of the word "required" as it appears in subdivision 2 of section 574 of the Relief Act.

The interpretation of the Relief Act by the California Supreme Court reaches a result which was never intended by the Congress. No other court, state or federal, has construed the Relief Act to grant such an exemption here under consideration. It is, of course, recognized that an erroneous decision relating to the assessment of motor vehicle fees of one serviceman would not warrant a request to this Court for certiorari. However, it must be recognized that the numerous military installations within this State are manned by a large number of nonresident military personnel. The exact extent of their liability for the payment of motor vehicle fees to this State is important to them and is of a considerable economic importance to the State of California. From the State's standpoint the decision frustrates the administration of the State's tax policies and contrary to the California Supreme Court's assertion, the result of the decision also frustrates those purposes of registration designed to permit motor vehicle identification and in furtherance of proper law enforcement. It is therefore submitted that the question here presented is of great importance to both the State of California and the nonresident military personnel stationed within this State.

D. Applicable California Law

The provisions governing exemptions of nonresidents from payment of vehicle fees in this State are contained in Article I (commencing at section 6700),

Chapter 4, Division 3, Vehicle Code. Section 6700 of the Vehicle Code (all section references are to the Vehicle Code unless otherwise indicated) provides that a nonresident, subject to exceptions not applicable here, may operate his vehicle in this State without payment of fees if the vehicle is duly registered and fees have been paid in the state of his residence.

The general exemption provision for nonresidents under section 6700 is applicable to members of the armed forces pursuant to section 6701, which provided at the times here in question:

“Any nonresident owner of a foreign vehicle who is a member of the armed forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. *Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty.*”
(Emphasis added.)

The last sentence of this section was added by Stats. 1959, Chapter 1921.

In summary, a nonresident member of the armed forces is exempt from the vehicle fees in this State pursuant to sections 6700 and 6701 under the following situations:

1. If the vehicle is registered in the domiciliary state;

2. If the vehicle is registered in a foreign state where the member was regularly assigned a permanent duty station.

Under the facts as set forth in this case, respondent Buzard is not within these exceptions. The vehicle was not registered in the State of Washington, the state of his domicile, and it was not registered in a foreign state where he was regularly assigned a permanent duty station. Thus, California license fees were due and payable when the vehicle was operated in the State of California pursuant to section 4000. Violation of this section is a misdemeanor (§ 40000).

E. Exemptions Under the Relief Act

The Relief Act generally exempts a serviceman's personal property from taxation by all taxing authorities except the state of his residence. Section 574 of the Act provides that the personal property of a serviceman shall not be deemed to have a situs in any state of which he is not a resident. Thus, the Act prevents double taxation which otherwise could result by a serviceman's being stationed under military orders in a state other than his resident state.

The Relief Act treats motor vehicles in a different fashion in that to avoid the tax on a vehicle by a state where the serviceman is stationed, the required motor vehicle tax of the resident state must have been paid. The exact wording of the Act setting forth such requirement is as follows:

“(2) When used in this section (a) the term ‘personal property’ shall include tangible and intangible property (including motor vehicles), and (b) the term ‘taxation’ shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided, that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.*” (Emphasis added.)

No such requirement exists as to other items of personal property.

The case of *Woodroffe v. Village of Park Forest* (D.C. Ill.), 107 F.Supp. 906, clearly demonstrates that a member of the armed forces must pay the registration fees in the state of his domicile in order to avoid taxation of the vehicle in a foreign state where he is stationed for military duty. In that case, a municipality of the State of Illinois attempted to tax the vehicle of a member of the armed forces stationed in Illinois, such member being a domiciliary of the State of Pennsylvania. The member had paid all required license fees to the State of Pennsylvania.

The court in construing section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940 stated at page 910 as follows:

"It is the view of the Court that the provisions of the aforementioned statute exempt the petitioner from the payment of the vehicle tax to the Village of Park Forest. The language of this section is clear. A person is not to be considered as having lost residence when the sole reason for his absence is compliance with military or naval orders, nor is he to be considered as having acquired a new residence when he is absent solely in compliance with these orders. *Moreover, personality of such military person, which by this section includes a motor vehicle, shall not be considered to have a situs for tax purposes in any political subdivision, of which such person is not a resident provided that he pays the required license fees to that political subdivision of which he is a legal resident.* In the case before the bar, it is not disputed that the sole reason for the petitioner's departure from his residence in Delaware County, Pennsylvania, on August 29, 1947, was his compliance with military orders to report to active service. Nor is it disputed that the sole reason for his presence at Fifth Army Headquarters, Chicago, Illinois, is the compliance with those orders. The petitioner has never lost his residence in Delaware County, Pennsylvania, nor has he acquired a residence in the Chicago area. *Since, therefore, he is not a resident of Park Forest, Illinois, and since it is undisputed that he has paid all required license fees to the State of Pennsylvania, the petitioner falls within the pur-*

view of Section 17 (50 U.S.C.A. (Appendix) 574) of the Act, and is not required to pay the vehicle tax to the respondent.” (Emphasis added.)

A similar result was reached in the case of *Whiting v. City of Portsmouth, Va.*, 118 S.E.2d 505. In that case a serviceman was convicted and sentenced to pay a fine for violating a tax ordinance of the City of Portsmouth which required every person having a place of residence in the city to pay an annual tax of \$10 on each motor vehicle operated or kept or used in the city. The defendant enlisted in the United States Navy from the State of Colorado and claimed that state as his domiciliary state. In 1958, the serviceman purchased an automobile and secured Virginia license tags for it. He operated the vehicle in Portsmouth without securing the license required by the city ordinance. In affirming the judgment of conviction, the court stated at pages 506-507:

“In paragraph (2) of said § 574 it is provided that the term ‘personal property’ shall include tangible and intangible personal property, including motor vehicles, and the term ‘taxation’ shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: ‘*Provided*, That the license, fee, or excise required by the State * * * of which the person is a resident or in which he is domiciled has been paid.’ ” (Emphasis theirs.)

* * * * *

“The tax levied by the City of Portsmouth on the appellant’s automobile is not a property tax,

but a license tax, assessed against the owner of the automobile for the privilege of using it on the streets of the city. 5-A Am.Jur., Automobiles and Highway Traffic, §81, p. 283; 60 C.J.S. Motor Vehicles, §59, p. 238. Such license tax falls within the provision of paragraph (2) of said §574, under which the appellant would be exempt from payment of the Portsmouth license tax only if he had paid a license tax thereon in Colorado, where he claimed his residence to be. Since it is admitted that he had not paid such license tax in that State, or elsewhere than in Virginia, he is therefore not exempt from the payment of the license tax assessed by the city of Portsmouth. Such has been the view of the Attorney General of Virginia in several instances. See Opinions of the Attorney General, 1948-1949, page 166; 1954-1955, page 155; 1958-1959, page 190."

The California Supreme Court construed the word "required" as used in the Relief Act in the light of the Washington State statute providing that "It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display number plate. . . ." (Rev. Code of Wash., § 46.16.010) It was then held that since respondent had not driven his vehicle in the State of Washington, no fees were *required* there within the meaning of the proviso in the Relief Act and consequently this State could not tax the vehicle.

It is petitioner's position that the word "required" as used in the Relief Act means the fees levied, imposed, exacted, or charged by the resident state.

The State of Washington, as in the case of all states, has enacted laws providing for and imposing motor vehicle fees. The mere fact that the State of Washington does not apply penal sanctions for nonpayment until a person drives the vehicle in the state without payment of fees should not mean that for purposes of exemption under the Relief Act that fees are not "required" by the resident state. Most, if not all, states enacted similar penal sanctions and Congress could not have intended that a serviceman must first drive his vehicle in the resident state in order to satisfy the exemption as to motor vehicles. Stated otherwise, section 46.16.010 of the Revised Code of Washington does not establish a motor vehicle tax for that state. The tax is provided for in other provisions. This section merely provides for penal sanctions for driving in that state without a proper license and display plates. Other sections of the Washington statute "require" the tax (Rev. Code of Wash., § 46.16.060, et seq.).

The Attorney General of the State of Virginia has in effect construed the term "required" as meaning "imposed". On the question of motor vehicle tax exemption for servicemen, the following is stated in Virginia Attorney General Reports (July 1, 1958-June 30, 1959, p. 191):

"In light of the above quoted language, I am of the opinion that military personnel residing in

Caroline County solely as a result of compliance with military orders stationing them at Camp A.P. Hill would be able to claim the exemption conferred by this statute, if all license fees imposed in the States of their permanent homes have been paid. This view is consistent with that heretofore taken by this office and that enunciated by the Federal courts. See, Report of the Attorney General (1954-1955), page 155; *Woodroffe v. Village of Park Forest*, (D.C. Ill.), 107 F.Supp. 906. Thus, an individual having the status under consideration would not be required to pay the motor vehicle license tax imposed by Caroline County (1) if a similar tax is imposed by the political subdivision of his permanent home State and that tax has been paid or (2) if no local tax is imposed by the political subdivision of his permanent home State. However, if a local motor vehicle license tax is imposed by the political subdivision of the permanent home State of such an individual, and that local tax has *not* been paid, he would, in my opinion, be subject to the motor vehicle license tax ordinance of Caroline County. Moreover, military personnel in Virginia, who do not reside on a military post, may operate their motor vehicles in Virginia indefinitely, without paying the license tax imposed by the Commonwealth, if such personnel have paid the license fees imposed by their permanent home States."

The California Supreme Court relies upon the case of *Dameron v. Brodhead*, 345 U.S. 322, 97 L.Ed. 1041, 73 S.Ct. 721. That case is not in point. In *Dameron*, the court was concerned with taxes assessed by the

City of Denver on household goods kept in an apartment in that city by an Air Force officer who was a resident of Louisiana. The court dealt only with the provisions of subdivision I of section 574 of the Relief Act, stressing the language providing that "personal property shall not be deemed to be located or present in or to have a situs for taxation in" the state where the person sought to be taxed was present solely because of military or naval orders. The case did not deal with the proviso in subdivision 2 pertaining to taxation of motor vehicles.

The decision of the California Supreme Court frustrates those purposes of registration designed to promote motor vehicle identification in aid of proper law enforcement. The decision authorizes nonresident servicemen to operate their vehicles in this State without the registration of the vehicle or the obtaining of license plates since California has no statutory provisions for the registration of such vehicles and the issuing of license plates without the payment of fees.

Public safety dictates that all vehicles be properly registered. If respondent's argument were adopted it would mean a serviceman from the State of Washington stationed in California for a number of years (respondent has been here over six years) could purchase a new car each year and never register a single vehicle in California so long as he did not drive in his home state. A car ineffectively licensed is not only tempting to the car thief, but it becomes

a public hazard in the event of an accident. In the hit-and-run accident witnesses almost instinctively look for the license plate on the hit-run car.

There is no doubt that Congress had these considerations in mind in treating motor vehicles differently than personal property generally and in providing that license fees would be paid either in the state of residence or in the state where the serviceman was stationed thus insuring effective registration and identification of motor vehicles.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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APPENDIX A

OPINION OF THE CALIFORNIA SUPREME COURT

People v. Buzard, 61 A.C. 927, 40 Cal.Rptr. 681

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

THE PEOPLE,

Plaintiff and Respondent,
v.

LYMAN E. BUZARD,

Defendant and Appellant.

Crim.
8013

Lyman E. Buzard appeals from a judgment following his conviction of a violation of section 4000 of the Vehicle Code, a misdemeanor.¹ His attempt by way of prohibition to foreclose the instant proceedings was unsuccessful. (Buzard v. Justice Court, 198 Cal.App.2d 814.)

Defendant is an officer in the United States Air Force. At all times herein pertinent he was a resident of the State of Washington and was stationed at Castle Air Force Base in Merced County, California. Between September 3 and December 19, 1959, he was temporarily assigned to duty for military training at

¹ Section 4000 of the Vehicle Code provided in part at the time of defendant's arrest: "No person shall drive . . . any motor vehicle . . . upon a highway unless it is registered and the appropriate fees have been paid under this code."

Maxwell Air Force Base in Alabama. While there he purchased an automobile, which he registered in that state in his name, and obtained Alabama license plates valid through September 30, 1960.

On defendant's return to Castle Air Force Base he drove his automobile from Alabama and has regularly used it in California since that time. While so using it he was stopped by a highway patrol officer and advised that the vehicle was required to be registered in California. He thereafter attempted to register the automobile but was informed by an official of the Department of Motor Vehicles that he could not do so without first making a payment in excess of \$100 in fees and penalties. He refused to make the demanded payment and his arrest under section 4000 followed on April 11, 1960.

Defendant's refusal to make payment of the fees and penalties and his defense against the instant charges are based on the contention that section 4000, insofar as it required the payment of fees and penalties, did not apply to him because of the Soldiers' and Sailors' Civil Relief Act of 1940. (50 U.S.C.A. App., § 574.) That act provides in section 574, subdivision (1) that "the personal property" of a serviceman "for purposes of taxation" shall not be deemed to have a situs in any state of which he is not a resident. In subdivision (2) automobiles are included as "personal property" within the meaning of the statute and the term "taxation" is applied to automobile licenses, fees and excises "*Provided*, That the license,

fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid.”²

The applicable statute of defendant's domiciliary state provides: “it shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display number plates. . . .” (Rev. Code of Wash., § 46.16.010.) Prior to his arrest defendant did not drive his automobile into or otherwise enter the State of Washington after the purchase of the vehicle, nor did he register the automobile there.³

Defendant does not contend that California may not, as an exercise of its police power, require him to register his automobile. In fact, his attempt to register the vehicle independently of the payment of fees and penalties was frustrated by the department. Defendant's position is simply that the Soldiers' and Sailors' Civil Relief Act of 1940 (hereinafter the Relief Act) prohibits the collection of such fees as an incident to a proper exercise of the police power or otherwise. As a consequence of the narrow question thus raised by the defendant, contentions which look to the purpose of registration in furtherance of

² Section 574 was amended in 1962 by Public Law 87-771 in a manner not here pertinent.

³ Following the arrest, however, defendant registered the automobile in accordance with the Washington statute when he first drove the automobile into that state.

proper law enforcement and administration fail to address themselves to the issue.

Defendant urges that he was not required to obtain a vehicle license and plates by his domiciliary state except as a prerequisite to the operation of his vehicle "over and along a public highway" of that state; that he has not driven his vehicle on such public highways; that, accordingly, no license charges or registration fees became due; that he has satisfied all licensing and registration obligations which that state required of him, and that he has likewise satisfied the proviso of the Relief Act. The argument meets the literal and commonsense meaning of the pertinent statutory provisions.

We are urged by the People to follow the opinion of the Supreme Court of Appeals of Virginia, wherein a city of that state was held to be entitled under the Relief Act to collect an additional vehicular licensing fee from a serviceman who had voluntarily registered and licensed his automobile in that state although claiming Colorado as his domicile. (*Whiting v. City of Portsmouth*, 118 S.E.2d 505.) But it does not appear from the opinion in that case whether the serviceman was *required* and had failed to pay fees in Colorado. Thus the issue herein raised was not considered or resolved by the Virginia court.

We cannot, as is urged, conclude that subdivision (2) is intended to work to the serviceman's advantage only where a charge has been made by and paid to his domiciliary state. The statute is not couched in terms

which flatly require the serviceman to have paid a fee, but rather in terms which accord to him the benefit when charges "required by the State" have been paid. These are the only charges which he must pay and when there are no charges made there must likewise be no *requirement* that he pay them. Any other conclusion would lead us to the very results which the Relief Act, by its purpose, seeks to avoid. If, for instance, California may exact the instant charges from defendant, then so may any other state into which he brings his vehicle until such time as he enters his domiciliary state and pays the fees there required for the first time. Such a narrow construction would frustrate the obvious beneficent purpose of the act and fail to heed the direction of the Supreme Court that "The Act must be read with an eye friendly to those who dropped their affairs to answer their country's call." (*Le Maistre v. Leffers*, 333 U.S. 1, 6; see also *Plesha v. United States*, 227 F.2d 624.)

It is further complained that the foregoing construction of the Relief Act permits a serviceman to escape the payment of fee altogether. The complaint is fairly answered by the Supreme Court in *Dameron v. Brodhead*, 345 U.S. 322, where the court was confronted by an attempt of the City of Denver to assess a personal property tax on a serviceman's furniture. The city argued that the Relief Act did not apply because the state of domicile did not impose any personal property taxes on the furniture. The court rejected this contention, saying at page 326: "The

short answer to the argument that it [the Relief Act] therefore only applies where multiple taxation is a real possibility is that the plain words of the statute do not say so. . . . There is no suggestion that the state of original residence must have imposed a property tax. . . . In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders."

Although the court in *Dameron* had before it a question involving the taxation of personal property, nevertheless the Relief Act expressly includes within the purview of section 574 the licensing of automobiles as taxation of personal property. It is true that automobiles are dealt with separately in subdivision (2) but the different treatment is only in respect to the manner in which vehicles may qualify to be treated as other personal property, and where it appears that the serviceman has paid such charges as may have been assessed by his domiciliary state the language of the statute leaves no room for different treatment insofar as tax or other charges are concerned. As the *Dameron* case cannot be distinguished in any material respect it follows that if the domiciliary state chooses not to exact a vehicular registration or licensing charge from its residents the prohibition against other states from doing so

would appear to be well within the intent and purpose of the Relief Act.

It is thus manifest that defendant was not subject to those provisions of section 4000 of the Vehicle Code requiring the payment of fees and penalties, and that his conviction thereunder is improper. In view of the foregoing it is not necessary that we determine the merit, if any, in defendant's further contention that the failure to exempt him from registration under other statutory provisions is a denial of the equal protection of the laws. (Veh. Code, § 6701.)

The judgment is reversed.

PEEK, J.

WE CONCUR:

TRAYNOR, C. J.

McCOMB, J.

PETERS, J.

TOBRINER, J.

• SCHAUER, J.

• DOOLING, J.

* Retired Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

APPENDIX B

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 (In Effect 1960)

Section 574:

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, posses-

sion, or political subdivision, or district: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

APPENDIX C

REVISED CODE OF WASHINGTON (In Effect 1960)

Vehicle Licenses

Section 46.16.010:

It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided: *Provided*, That these provisions shall not apply to farm tractors and farm implements temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law: *Provided further*, That these provisions shall not apply to equipment defined as follows:

“Special highway construction equipment” is any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track

laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (1) are in excess of the legal width or (2) which, because of their length, height or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (3) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

“Special highway construction equipment” does not include any of the following:

(a) Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

APPENDIX D

CALIFORNIA VEHICLE CODE

(In effect 1960)

Section 6701:

Any nonresident owner of a foreign vehicle who is a member of the armed forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty.

APPENDIX E

CALIFORNIA VEHICLE CODE

(In Effect 1960)

Section 4000:

No person shall drive, move, or leave standing any motor vehicle, trailer, semi-trailer, pole or pipe dolly, or auxiliary dolly upon a highway unless it is registered and the appropriate fees have been paid under this code.

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JOHN F. DAVIS, CLERK

In the Supreme Court of the
United States

OCTOBER TERM, 1964

No. [REDACTED] 40

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

VS.

LYMAN E. BUZARD,
Respondent.

Respondent's Brief in Opposition to
Petition for Writ of Certiorari

✓ C. RAY ROBINSON
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Merced, California

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 803

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LYMAN E. BUZARD,

Respondent.

Respondent's Brief in Opposition to Petition for Writ of Certiorari

Respondent, Captain Lyman E. Buzard, U.S.A.F., opposes the petition for a writ of certiorari to review the judgment of the California Supreme Court. That judgment reversed respondent's conviction for failure to register his car in California and failure to pay "appropriate fees", purportedly in violation of Section 4000 of the California Vehicle Code.

QUESTIONS PRESENTED

I. Whether the Soldiers' and Sailors' Relief Act of 1940, 50 U.S.C. App. § 574, when read with Section 46.16.010 of the Revised Code of Washington, prohibited California from

imposing license fees, taxes and excises on the automobile of petitioner, a serviceman and citizen of Washington, prior to the time that he first took his car on Washington highways.

II. Whether Section 6701 of the California Vehicle Code, as amended in 1959, denies respondent equal protection of the laws in violation of the 14th Amendment of the United States Constitution and in violation of Article 1, Section 11 of the California Constitution, in that it arbitrarily discriminates against servicemen absent from California under "temporary duty orders."*

STATUTES INVOLVED

Pertinent federal, California and Washington statutes are set out as Appendices B, C, D and E of the Petition. In addition, respondent sets forth Sections 46.12.010 and 46.12.020 of the Revised Code of Washington, as Appendices A and B of this brief in opposition.

ARGUMENT IN OPPOSITION TO GRANTING OF THE WRIT

I. The Supreme Court of California Has Correctly Interpreted Washington Statutes and the Soldiers' and Sailors' Relief Act in Accord with the Applicable Decision of the United States Supreme Court.

A. The California Supreme Court's Decision Interprets the Soldiers' and Sailors' Relief Act Liberally in Favor of the Serviceman.

The United States Supreme Court has consistently and unequivocally ruled that the Soldiers' and Sailors' Relief Act must be construed liberally in favor of servicemen. *Boone v. Lightner*, 319 U.S. 561, 575 (1943); *LeMaistre v. Leffers*, 333 U.S. 1, 6 (1947). The opinion of the California

*The California Supreme Court did not reach this question; respondent wishes to preserve the argument, however, only if this Court is inclined to grant a writ of certiorari.

Supreme Court in this matter, a unanimous opinion concurred in by all seven members of the court, gives the statute such a liberal interpretation.

B. The California Supreme Court Correctly Ruled That Washington Required No Taxes at the Time of Respondent's Arrest.

The Soldiers' and Sailors' Relief Act, 50 U.S.C. App., § 574, speaking of servicemen, states:

"... such person shall not be deemed to have lost a residence or domicile in any State ... solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become a resident in or a resident of, any other State ... solely by reason of being, so absent. For the purposes of taxation in respect of the personal property ... of any such person by any State ... of which such person is not a resident or in which he is not domiciled ... personal property shall not be deemed to be located or present in or to have a situs for taxation in such State. ..."

Under subsection (2) of Section 574 automobiles are included as "personal property" within the meaning of the statute and the term "taxation" applies to automobile licenses, fees and excises, provided that the

"... license, fee, or excise required by the State ... of which the person is a resident or in which he is domiciled has been paid."

In the case at bar, respondent was assigned to Alabama on temporary duty for a period of four months. While there he purchased an automobile which he registered in Alabama, with Alabama license plates being issued to enable him to drive it in that state during the two months remaining of his tour of duty there.

He returned to California, again pursuant to official orders, in January 1960, and was arrested in late February

for failure to register the car in California and failure to pay California taxes and fees. The car at that time was still validly registered in Alabama and still carried valid Alabama license plates.

Petitioner argues that respondent does not come within the protection of Section 574 because he had not paid the fees "required by the State" of which he was a resident, namely, Washington. But under Washington law no fees were due and owing until respondent drove the car into Washington.

The Revised Code of Washington, Section 46.16.010, states:

"It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display license number plates. . . ." (Emphasis supplied.)

No fees were therefore required to be paid by respondent until he drove his car on Washington highways. In the interim, even though he was a resident of Washington, there was nothing in Washington law to deny him a right to voluntarily register the car in Alabama and drive it outside Washington with Alabama license plates. The practical reasons for this are apparent.

The difficulties of registering an automobile via long distance, the delays occasioned by correspondence to obtain the necessary forms, might deny to a serviceman the use of his car for an extended period of time. Washington law has strict provisions requiring certificates of ownership as a prerequisite to registration. Sections 46.12.010, 46.12.020, Revised Code of Washington.* Forms for ownership docu-

*These statutes are set out as Appendix A and Appendix B to this brief.

ments, for registration and for license plates would all have to be obtained from the responsible Washington offices, returned to the serviceman and completed by him without advice or assistance by Washington officials familiar with such documents. They would then have to be returned to Washington for processing. After they were considered and acted upon by those officials, they would have to be returned to the serviceman. This would be the normal cumbersome routine; but further delays and hindrances could develop. Most important, however, under Section 46.12.030 of the Revised Code of Washington the applicant for a certificate of ownership must describe the vehicle and all encumbrances on it, and

“... the director of licenses may in any instance, in addition to the information required on such application [for a certificate of ownership] require additional information *and a physical examination of the vehicle.*”
(Portion in brackets and emphasis supplied.)

The plight of a serviceman in Alabama, attempting to register his car in Washington by mail, would be completely thwarted if the director chose to demand physical examination of the vehicle some two thousand and more miles away. It would be delayed interminably if the director chose to demand “additional information.”

Petitioner contends that the word “required” in Section 574 means “... the fees levied, imposed, exacted or charged by the resident state.” (Petition, page 14.) And it argues that even though no such fees are as yet due and payable the serviceman should be denied his exemption under the Relief Act. The difficulty with this reasoning is that it is not what Section 574 *says*. As the Supreme Court of California stated in its opinion:

“Defendant [respondent] urges that he was not required to obtain a vehicle license and plates by his

domiciliary state except as a prerequisite to the operation of his vehicle 'over and along a public highway' of that state; that he has not driven his vehicle on such public highways; that, accordingly, no license charges or registration fees became due; that he has satisfied all licensing and registration obligations which that state required of him, and that he has likewise satisfied the proviso of the Relief Act. *The argument meets the literal and commonsense meaning of the pertinent statutory provision . . .* We cannot, as is urged, conclude that subdivision (2) [of Section 574] is intended to work to the serviceman's advantage only where a charge has been made by and paid to his domiciliary state. The statute is not couched in terms which flatly require the serviceman to have paid a fee, but rather in terms which accord to him the benefit when charges 'required by the State' have been paid. *These are the only charges which he must pay and when there are no charges made there must likewise be no requirement that he pay them.*" (Emphasis and portion in brackets supplied.) (Opinion; Petition, Appendix A; pages 22-23.)

This Court in *Dameron v. Brodhead*, 345 U.S. 322, 326; 97 L.Ed. 1041 (1953), stated:

"Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state or original residence whether or not that state exercised the right." (Emphasis supplied.)

This Court has thus ruled that a serviceman is afforded the protections of the Act if his state of residence imposes no tax; it follows as a matter of simple logic that if a tax is imposed as to some persons, but is as yet not imposed on this serviceman, that he also is protected.

C. The California Supreme Court Correctly Interprets the Relief Act to Assure Against Multiple Taxation.

This Court in *Dameron v. Brodhead*, supra, 345 U.S. 322, 326, 97 L.Ed. 1041 (1953), also ruled that the Relief Act is designed to prevent multiple taxation. Indeed, in the *Dameron* case the respondent urged that the Act applied only when multiple taxation was a "real possibility", but this Court firmly refused to apply any such limitation on its application.

In the instant case, as we have pointed out, respondent bought his car while on extended temporary duty in Alabama, more than 2500 miles from his home state and more than 2000 miles from his duty station in California. He voluntarily registered his car in Alabama and paid all Alabama fees at that time. No other alternative was open to him except to attempt to register it long distance, by mail. And as we have pointed out, the responsible officials in Washington are by statute given the right to refuse to register a car in that fashion. Therefore, if petitioner's argument is correct, respondent by necessity 1) had to pay Alabama fees, 2) he was then liable for California fees, and 3) the moment he first drove on Washington highways he was liable for Washington fees. At a minimum he would have been subject to triple taxation.

Triple taxation, however, is only part of the story. Petitioner drove the car back to his duty station in California by a direct route, starting in Alabama and passing through Mississippi, Louisiana, Texas, New Mexico, Arizona and Nevada—a total of eight states. If petitioner's argument is a valid one, then each of those eight states could properly have demanded that he pay all of their license fees, taxes and excises. *If petitioner's argument is a valid one, respondent had no protection against this sort of liability unless he could have forced Washington to accept (by mail)*

registration and license fees which were not yet required to be paid by him, for a car which Washington might well have refused to register.

The California Supreme Court in its opinion in the case at bar recognized that the Relief Act is designed to protect against multiple taxation and that to accept petitioner's argument would:

"... lead us to the very results which the Relief Act, by its purpose, seeks to avoid. If, for instance, California may exact the instant charges from defendant [respondent], then so may any other state into which he brings his vehicle until such time as he enters his domiciliary state and pays the fees there required for the first time. Such a narrow construction would frustrate the obvious beneficent purpose of the act . . ." (Opinion; Petition, Appendix A, page 23.)

D. The Dameron Case Cannot Be Distinguished.

Petitioner strains to contend that *Dameron v. Brodhead* is not in point in the instant case as the Court was there concerned with personal property taxes in general, under subsection (1) of Section 574, and not with automobile fees, taxes and excises, under subsection (2). The argument is hardly persuasive as it begs the question. Automobile fees and taxes are treated precisely the same way by the Relief Act if such fees "required" by the home state have been paid; the question is whether fees were "required." In this case none were required and the discussion in *Dameron* is precisely in point; the Court's definition of the policy of the Relief Act as found in *Dameron*, applies with full force in the case at bar.

The California Supreme Court in its opinion states:

"Although the court in *Dameron* had before it a question involving the taxation of personal property, nevertheless the Relief Act expressly includes within the

purview of section 574 the licensing of automobiles as taxation of personal property. It is true that automobiles are dealt with separately in subdivision (2) but the different treatment is only in respect to the manner in which vehicles may qualify to be treated as other personal property, and where it appears that the serviceman has paid such charges as may have been assessed by his domiciliary state the language of the statute leaves no room for different treatment insofar as tax or other charges are concerned. As the *Dameron* case cannot be distinguished in any material respect it follows that if the domiciliary state chooses not to exact a vehicular registration or licensing charge from its residents the prohibition against other states from doing so would appear to be well within the intent and purpose of the Relief Act." (Opinion; Petition, Appendix A, pages 24-25.)

E. Petitioner's Reliance on the Whiting Case Is Misdirected.

Petitioner attempts to argue that *Whiting v. City of Portsmouth*, 118 S.E. 2d 505 (Va. 1961), supports its position. This reliance is misdirected as the facts of the *Whiting* case have no parallel in the case at bar. Whiting, a serviceman, chose voluntarily to register his car in Virginia, the state where he was stationed, and paid all state taxes. *He had voluntarily chosen not to register it in Colorado, his state of domicile.* The issue was whether the City of Portsmouth, Virginia, where he lived, might assess him for city taxes. The court held that the city might do so because:

"... appellant would be exempt from payment of the Portsmouth license tax only if he had paid a license tax thereon in Colorado, where he claimed his residence to be. Since it is admitted that he had not paid such license tax in that State, *or elsewhere than in Virginia*, he is therefore not exempt from the payment of the license tax assessed by the city of Portsmouth." 118 S.E. 2d at 507. (Emphasis supplied.)

Thus, the court never considered what is the situation in respondent's case, that is, the effect of there being no tax yet required by the serviceman's state of domicile. Furthermore, it never considered the effect of the payment of taxes in a state *other* than his state of domicile.

The Supreme Court of California considered petitioner's reliance on the *Whiting* case and stated:

"... it does not appear from the opinion in that case [the *Whiting* case] whether the serviceman was *required* and had failed to pay fees in Colorado. Thus the issue herein raised was not considered or resolved by the Virginia court." (Emphasis the court's; portion in brackets supplied.)

F. The California Supreme Court's Decision Properly Recognizes That Automobile Registration Is Not in Issue.

Petitioner attempts to argue that a writ should be granted in this case because the opinion of the California Supreme Court "frustrates" proper registration of automobiles in California. The argument is specious as counsel for respondent has from the outset made it clear that California or any State might, as a proper incident of its police power, require the registration of non-residents' cars. It is the imposition of fees, taxes and penalties *as a condition* to such registration which is the problem. This position was stated at the trial in justice court (RT 25) and has been stated in respondent's various briefs.

The issues presented by this case, therefore, are limited, as the California Supreme Court recognized:

"Defendant does not contend that California may not, as an exercise of its police power, require him to register his automobile. If fact, his attempt to register the vehicle independently of the payment of fees and penalties was frustrated by the department. Defendant's position is simply that the Soldiers' and Sailors' Civil

Relief Act of 1940 (hereinafter the Relief Act) prohibits the collection of such fees as an incident to a proper exercise of the police power or otherwise. As a consequence of the narrow question thus raised by the defendant, contentions which look to the purpose of registration in furtherance of proper law enforcement and administration fail to address themselves to the issue." (Opinion; Petition, Appendix A, pages 21-22.)

II. The 1959 Amendment to Section 6701 of the California Vehicle Code Denies Petitioner Equal Protection of the Laws.

Prior to 1959, Section 6701 of the California Vehicle Code would automatically have protected a serviceman in respondent's position—one whose regular duty station was in California but who purchased a car while absent from California on temporary duty orders. As then worded the statute gave full recognition to the provisions and spirit of the Soldiers' and Sailors' Relief Act. The statute, prior to 1959, read as follows:

"Any nonresident owner of a foreign vehicle who is a member of the Armed Forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued."

In 1959, however, the Legislature amended this statute by adding the following language:

"Such competent military orders shall not include military orders for leave, for temporary duty, nor for any

other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty."

This addition to the statute thus denies to the serviceman entering California from a temporary duty station the same protections afforded other servicemen entering the state. It is respondent's contention that this is an arbitrary classification which violates his rights to equal protection of the laws under the 14th Amendment of the United States Constitution and Article 1, § 11 of the California Constitution.

If respondent had come into California from Alabama, where he had been on permanent duty, with *either* Washington or Alabama plates on his car, there could have been no California tax imposed. But merely because he was in Alabama on "temporary duty" when he bought the car, California attempts to impose a tax on it. No explanation can be given to explain this classification which operates so harshly to penalize the helpless serviceman who has no choice but to obey his orders.

In the Army and Air Force temporary duty may extend up to six months; in the Navy it may last considerably longer as a serviceman is often assigned to a service school on temporary duty orders for periods of longer than one year and then reassigned to a more advanced school, also on temporary duty. Upon assignment or return to duty in California that serviceman would be excluded from the protections of Section 6701 merely because he had been absent on "temporary" duty orders.

Whatever might be the rationale of California denying the exemption of Section 6701 to a serviceman who *voluntarily* leaves California on leave or liberty, or otherwise, and purchases a car while so absent, no such rationale exists to

deny it to a serviceman who does so while absent pursuant to official temporary duty orders. No rationale exists to distinguish between the serviceman absent *involuntarily* pursuant to "temporary duty" orders while he would be protected if his orders had been classified as for "permanent duty".

The California Supreme Court has spoken authoritatively on the question of reasonable classification and equal protection of the laws. As that court stated, in *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 754 (1958):

"Article I, section 11 of the California Constitution requires that all laws of a general nature have a uniform operation. This has been held generally to require a reasonable classification of persons upon whom the law is to operate. The classification must be one that is founded upon some natural or intrinsic or constitutional distinction. [Cases cited.] Likewise, those within the class, that is those persons similarly situated with respect to that law, must be subjected to equal burdens. [Case cited] The clause of the Fourteenth Amendment to the federal Constitution which prohibits a state from denying to 'any person within its jurisdiction the equal protection of the laws' has been similarly construed.

"Equal protection of the law is not afforded when a statute imposes a particular disability upon a class arbitrarily selected from a larger number of persons, all of whom stand in the same relation to the burden imposed, and between which class and the others no reasonable distinction or substantial difference can be found to warrant the inclusion of the one and the exclusion of the other." (Portion in brackets supplied.)

The rigors of service life, the incessant change of duty station, the constant separation of the serviceman from his home and family, are harsh enough. His temporary absence

(which may extend for months at a time) from his permanent duty station, pursuant to temporary duty orders, should not be seen as an excuse to *increase* the hardship of the military man. Yet that is precisely what Section 6701, as amended, attempts to do.

III. Conclusion.

Respondent prays that the petition for writ of certiorari be denied.

Respectfully submitted,

C. RAY ROBINSON
MARY C. FISHER

Attorneys for Respondent

Dated, Merced, California
January 22, 1965.

(Appendices Follow)

Appendix A

REVISED CODE OF WASHINGTON

Section 46.12.010:

Certificates required to operate and sell vehicles. It shall be unlawful for any person to operate any vehicle in this state under a certificate of license registration of this state without securing and having in full force and effect a certificate of ownership therefor and it shall further be unlawful for any person to sell or transfer any vehicle without complying with all the provisions of this chapter relating to certificates of ownership and license registration of vehicles. Provided, That the provisions of this section relating to the sale of vehicles shall not apply to the first sale of vehicles by manufacturers and dealers: Provided Further, That nothing in this title shall be construed to prevent any person entitled thereto from securing a certificate of ownership upon a vehicle without securing a certificate of license registration and vehicle license plates, when, in the judgment of the director of licenses, it is proper to do so.

Appendix B

REVISED CODE OF WASHINGTON

Section 46.12.020:

Prerequisite to issuance of vehicle license and plates. No vehicle license number plates or certificate of license registration, whether original issue or duplicates, shall be issued or furnished by the director of licenses unless the applicant therefor shall at the same time make satisfactory application for a certificate of ownership or shall present satisfactory evidence that such a certificate of ownership covering such vehicle has been previously issued.

FILE COPY

Office Supreme Court, U.S.
FILED

AUG 23 1965

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCT. TERM, 1965

No. 40

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Petitioner,

v.

LYMAN E. BUZARD,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court
of the State of California

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IN THE
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OCT. TERM, 1965

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THE PEOPLE OF THE STATE OF
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v.

LYMAN E. BUZARD,

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On Petition for Writ of Certiorari to the Supreme Court
of the State of California

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Supreme Court of the State of California (R 45-49) is reported in *People v. Buzard*, 61 Cal.2d 833, 395 P.2d 593.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of the State of California was entered on October 8, 1964. A timely petition for rehearing was denied by that court on November 4, 1964. Petitioner, the State of California, filed a petition for certiorari on January 2, 1965. This Court granted certiorari on March 8, 1965. Jurisdiction of this Court is conferred by 28 U.S.C. section 1257(3). (See also, Rule 22(1) of this Court.)

STATUTORY PROVISIONS INVOLVED
Soldiers' and Sailors' Civil Relief Act of 1940
(In Effect 1960)

Section 574:

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: *Provided*, That nothing contained in this section shall prevent taxation by any State, Terri-

tory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

Revised Code of Washington
(In Effect 1960)

Vehicle Licenses

Section 46.16.010:

It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided: *Provided*, That these provisions shall not apply to farm tractors and farm implements temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the day-

light hours or at night when such equipment has lights that comply with the law: *Provided further*, That these provisions shall not apply to equipment defined as follows:

“Special highway construction equipment” is any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (1) are in excess of the legal width or (2) which, because of their length, height or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (3) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not ex-

ceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface:

Exclusions:

“Special highway construction equipment” does not include any of the following:

(a) Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

California Vehicle Code
(In Effect 1960)

Section 6701:

Any nonresident owner of a foreign vehicle who is a member of the armed forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. Such competent military orders shall

not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty.

California Vehicle Code
(In Effect 1960)

Section 4000:

No person shall drive, move, or leave standing any motor vehicle, trailer, semi-trailer, pole or pipe dolly, or auxiliary dolly upon a highway unless it is registered and the appropriate fees have been paid under this code.

QUESTION PRESENTED

The question presented involves an interpretation of the Soldiers' and Sailors' Civil Relief Act of 1940 (U.S.C.A. Title 50 (Appendix) Section 574).

The question is whether a nonresident serviceman having a permanent duty station in the State of California is authorized to operate his motor vehicle in California without the payment of fees thereon where no motor vehicle fees have been paid to the state of his residence (Washington) although such state requires the payment of fees for the privilege of operating a vehicle on the highways of that state.

The resolution of this question turns on the interpretation to be given the portion of Section 574 of the Relief Act quoted above which states that:

"... (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in

respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

STATEMENT

A. Statement of the Case

An amended complaint was filed May 31, 1960, in the Justice Court of the Atwater Judicial District, County of Merced, State of California, charging respondent with a violation of Section 4000 of the Vehicle Code of the State of California, in that respondent on or about February 26, 1960, did wilfully and unlawfully drive a motor vehicle upon a highway without said vehicle being registered in the State of California and without having paid the appropriate California fees (R 8).

Respondent demurred to the complaint (R 2). The demurrer was overruled and a petition for writ of prohibition was filed in the Superior Court of California, County of Merced, to restrain the justice court from proceeding to hear the charges. The superior court denied the writ on August 2, 1960. On appeal to the District Court of Appeal in and for the Fifth Appellate District, the judgment of the superior court was affirmed on January 8, 1962, this decision being reported as *Buzard v. Justice Court*, 198 Cal.App.2d 814, 18 Cal. Rptr. 348.

Trial was then had by the justice court without a jury. Judgment was entered finding respondent guilty

as charged. A fine of \$50 was imposed, the judgment being suspended and the respondent placed on probation for six months (R 5). Respondent filed his notice of appeal to the Superior Court, County of Merced, from the judgment of conviction on January 22, 1963 (R 5).

Pursuant to California Rules of Court, Section 62, et seq., the District Court of Appeal of the State of California in and for the Fifth Appellate District issued its order on January 7, 1964, transferring the appeal to its jurisdiction (R 37). The District Court of Appeal rendered its decision on April 21, 1964, affirming the judgment of conviction (R 38).

The California Supreme Court on June 16, 1964, acting upon the timely petition of respondent Buzard granted a hearing in the case. The Supreme Court rendered its decision on October 8, 1964, reversing the judgment of conviction (R 45). It is this decision that the petitioner, the State of California, seeks to have reviewed in this proceeding. The decision of the California Supreme Court was based solely on its interpretation of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C.A. App. § 574) and not upon any state ground.

B. Statement of the Facts¹

The material facts are not in dispute. It was stipulated by counsel for respondent and the District Attorney at the time of trial in the Justice Court that the

¹ The within statement is substantially identical to that recited by the California Supreme Court in its decision.

facts set forth in the amended complaint were true (R 11). In addition, respondent Buzard testified (R 12). The stipulation and the testimony of respondent Buzard show the following:

Respondent Buzard is a captain in the United States Air Force and his permanent duty station is Castle Air Force Base situated in the County of Merced, State of California (R 8). Respondent is a resident of the State of Washington (R 12).

Respondent left the service in March 1956, having been on active duty since June 1951 (R 13, 14, 15). He was recalled to active duty in June 1957, and assigned to Castle Air Force Base, such station being his permanent duty station (R 8, 15). On September 3, 1959, he was detailed to a squadron officers' school in Maxwell, Alabama, on temporary duty for approximately four months, returning to his permanent duty station at Castle Air Force Base in January 1960, where he has since been stationed (R 8, 15).

While in the State of Alabama on temporary duty, respondent purchased a 1959 model Oldsmobile, a demonstrator (R 16, 17). The car was registered in Alabama and all necessary fees paid by the vendor at the time of sale (R 16). Alabama license plates were issued and were valid in that state until September 30, 1960 (R 16).

Respondent drove the Oldsmobile to California after his temporary duty in Alabama ended. During the times here in question, the vehicle had never been operated in the State of Washington and was never

registered and fees paid thereon in that state (R 8, 17).

The testimony of respondent Buzard shows that he was stopped by the California Highway Patrol on or about February 26, 1960, the purpose being to check out-of-state auto licenses (R 17, 18); that following consultation with the Castle Air Force Base Provost Marshal, respondent appeared at an office of the Department of Motor Vehicles and for the purpose of discussing registration of his vehicle and the payment of fees (R 19, 20); that he was informed by an employee of the Department of Motor Vehicles that it was necessary for him to register the vehicle and to pay the appropriate license fees which were in excess of \$100 (R 21); that the requested fees were not paid; that thereafter a citation and complaint issued charging a violation of section 4000 of the Vehicle Code; and that during the summer of 1960, respondent went to the State of Washington and registered his vehicle in that state (R 26).

SUMMARY OF ARGUMENT

The California Supreme Court has held that under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, the State of California is prohibited from taxing respondent's vehicle, and hence a conviction for violation of the penal provisions of the Registration Statute was invalid.

This decision is based upon the erroneous premise that since respondent had not driven his vehicle in

the resident State of Washington at the time here in question, no fees were *required* by that state within the meaning of the Relief Act and consequently California could not tax the vehicle and impose a penal provision for nonpayment of the tax.

It is respondent's position that the Relief Act treats motor vehicles differently than personal property generally and that to be exempt from the tax on a vehicle by a state where the serviceman is permanently stationed the motor vehicle tax charged by the resident state must have been paid.

The term "required" as used in the Relief Act means those fees established, or charged by the resident state. The term does not relate to the time such fees become due or payable; i.e., the date the vehicle is used upon the highway. The wording of the Washington statute is prompted by the fact that a privilege tax as distinguished from a property tax is involved.

The interpretation of the Relief Act by the California Supreme Court impairs those purposes of registration designed to promote motor vehicle identification in aid of proper law enforcement. If respondent's arguments were adopted, it would mean that a serviceman permanently stationed in this State could purchase a new car each year without registering the vehicle and paying fees thereon as long as he did not drive the vehicle in his home state. It is submitted that Congress did not intend this result but on the contrary section 574 of the Act clearly shows that Congress intended the vehicle of the serviceman to be

either registered in the serviceman's home state or if not, the vehicle would be subject to registration with the payment of appropriate fees in a state where the serviceman is permanently stationed and the penal sanction for violation thereof could properly be imposed.

ARGUMENT

I. The Soldiers' and Sailors' Civil Relief Act of 1940 Does Not Prohibit California From Taxing Respondent's Vehicle

A. Applicable California Law

The provisions governing exemptions of non-residents from payment of vehicle fees in this State are contained in Article I (commencing at section 6700), Chapter 4, Division 3, Vehicle Code. Section 6700 of the Vehicle Code (all section references are to the Vehicle Code unless otherwise indicated) provides that a non-resident, subject to exceptions not applicable here, may operate his vehicle in this State without payment of fees if the vehicle is duly registered and fees have been paid in the state of his residence.

The general exemption provision for nonresidents under section 6700 is applicable to members of the armed forces pursuant to section 6701, which provided at the times here in question:

“Any nonresident owner of a foreign vehicle who is a member of the armed forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether a resident or non-

resident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. *Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty.*" (Emphasis added.)

The last sentence of this section was added by Stats. 1959, Chapter 1921.

In summary, a nonresident member of the armed forces is exempt from the vehicle fees in this State pursuant to sections 6700 and 6701 under the following situations:

1. If the vehicle is registered in the domiciliary state;
2. If the vehicle is registered in a foreign state where the member was regularly assigned a permanent duty station.

Under the facts here, respondent Buzard is not within these exceptions. The vehicle was not registered in the State of Washington, the state of his domicile, and it was not registered in a foreign state where he was regularly assigned a permanent duty station. Thus, California license fees were due and payable when the vehicle was operated in the State of Cali-

fornia pursuant to section 4000. Violation of this section is a misdemeanor (§ 40000).

B. Exemptions Under the Relief Act

The Relief Act generally exempts a serviceman's personal property from taxation by all taxing authorities except the state of his residence. Section 574 of the Act provides that the personal property of a serviceman shall not be deemed to have a situs in any state of which he is not a resident. Section 574 of the Act provides that for the purpose of taxation of personal property a member of the armed forces shall not be deemed to have lost a residence or domicile in any state solely by being absent therefrom in compliance with military orders or to have acquired a residence or domicile in any other state while and solely by reason of being so absent. This section also provides that for purposes of taxation of personal property of any such person by any state of which he is not a resident, personal property shall not be deemed to be located or present in or to have a situs for taxation in such a state.

The Relief Act treats motor vehicles in a different fashion in that to be exempt from the tax on a vehicle by a state where the serviceman is stationed, the required motor vehicle tax of the resident state must have been paid. The exact wording of the Act setting forth such requirement is as follows:

“(2) When used in this section (a) the term ‘personal property’ shall include tangible and intangible property (including motor vehicles), and

(b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.*" (Emphasis added.)

No such requirement exists as to other items of personal property.

The case of *Woodroffe v. Village of Park Forest* (D.C. Ill.), 107 F.Supp. 906, clearly demonstrates that a member of the armed forces must pay the registration fees in the state of his domicile in order to be exempt from the tax on the vehicle in a foreign state where he is stationed for military duty. In that case, a municipality of the State of Illinois attempted to tax the vehicle of a member of the armed forces stationed in Illinois, such member being a domiciliary of the State of Pennsylvania. The member had paid all required license fees to the State of Pennsylvania. The court in construing section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940 stated at page 910 as follows:

"It is the view of the Court that the provisions of the aforementioned statute exempt the petitioner from the payment of the vehicle tax to the Village of Park Forest. The language of this section is clear. A person is not to be considered as having lost residence when the sole reason for his absence is compliance with military or naval orders, nor is he to be considered as having ac-

quired a new residence when he is absent solely in compliance with these orders. *Moreover, personality of such military person, which by this section includes a motor vehicle, shall not be considered to have a situs for tax purposes in any political subdivision, of which such person is not a resident provided that he pays the required license fees to that political subdivision of which he is a legal resident.* In the case before the bar, it is not disputed that the sole reason for the petitioner's departure from his residence in Delaware County, Pennsylvania, on August 29, 1947, was his compliance with military orders to report to active service. Nor is it disputed that the sole reason for his presence at Fifth Army Headquarters, Chicago, Illinois, is the compliance with those orders. The petitioner has never lost his residence in Delaware County, Pennsylvania, nor has he acquired a residence in the Chicago area. *Since, therefore, he is not a resident of Park Forest, Illinois, and since it is undisputed that he has paid all required license fees to the State of Pennsylvania, the petitioner falls within the purview of Section 17 (50 U.S.C.A. (Appendix) 574) of the Act, and is not required to pay the vehicle tax to the respondent.*" (Emphasis added.) (*Christian v. Strange*, Ariz., 392 P.2d 575.)

The principle that payment of the tax to the resident state is a prerequisite to the exemption contained in section 574 was established in the case of *Whiting v. City of Portsmouth, Va.*, 118 S.E.2d 505. In that case a serviceman was convicted and sentenced to pay a fine for violating a tax ordinance of the City of

Portsmouth which required every person having a place of residence in the city to pay an annual tax of \$10 on each motor vehicle operated or kept or used in the city. The defendant enlisted in the United States Navy from the State of Colorado and claimed that state as his domiciliary state. In 1958, the serviceman purchased an automobile and secured Virginia license tags for it. He operated the vehicle in Portsmouth without securing the license required by the city ordinance. In affirming the judgment of conviction, the court stated at pages 506-507:

“In paragraph (2) of said § 574 it is provided that the term ‘personal property’ shall include tangible and intangible personal property, including motor vehicles, and the term ‘taxation’ shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: ‘*Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid.’ ” (Emphasis theirs.)

* * * * *

“The tax levied by the City of Portsmouth on the appellant’s automobile is not a property tax, but a license tax, assessed against the owner of the automobile for the privilege of using it on the streets of the city. 5-A Am.Jur., Automobiles and Highway Traffic, §81, p. 283; 60 C.J.S. Motor Vehicles, §59, p. 238. Such license tax falls within the provision of paragraph (2) of said §574, under which the appellant would be exempt from pay-

ment of the Portsmouth license tax only if he had paid a license tax thereon in Colorado, where he claimed his residence to be. Since it is admitted that he had not paid such license tax in that State, or elsewhere than in Virginia, he is therefore not exempt from the payment of the license tax assessed by the city of Portsmouth. Such has been the view of the Attorney General of Virginia in several instances. See Opinions of the Attorney General, 1948-1949, page 166; 1954-1955, page 155; 1958-1959, page 190."

The California Supreme Court construed the word "required" as used in the Relief Act in the light of the Washington State statute providing that, "It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display number plate . . ." (Rev. Code of Wash., § 46.16.010). It was then held that since respondent had not driven his vehicle in the State of Washington, no fees were *required* there within the meaning of the proviso in the Relief Act and consequently California could not tax the vehicle.

It is petitioner's position that the word "required" as used in the Relief Act means the fees "established" or "charged" by the resident state. The language of the proviso in section 574 properly construed means that in order to be exempt from the tax in a state where he is permanently stationed the serviceman must have *actually paid* the motor vehicle fees charged by his resident state.

The State of Washington, as in the case of all states, has enacted laws providing for motor vehicle fees. The mere fact that the State of Washington does not apply penal sanctions for nonpayment until a person drives the vehicle in the state without payment of fees should not mean that for purposes of exemption under the Relief Act that fees are not "required" by the resident state. Most, if not all, states have similar penal sanctions² and Congress could not have intended that a serviceman must first drive his vehicle in the resident state in order to satisfy the exemption as to motor vehicles.

The wording of the Washington statute that fees are payable when the vehicle is operated on the highway is prompted by the type of tax involved. Motor vehicle fees have generally been considered in the nature of a charge for the privilege of using the highways and thus a privilege tax and not a property tax (*Ingels v. Riley*, 5 Cal.2d 154, 53 P.2d 939; 60 C.J.S., Motor Vehicles, § 59, p. 238; *Storaasli v. Minnesota*, 283 U.S. 57, 51 S.Ct. 354, 75 L.Ed. 839). Thus, due to the nature of the tax involved, a privilege tax, statutes on the subject provide that such tax is not due and payable until the vehicle is operated upon the highway. Such language, of course, does not mean that the tax does not exist and is not required by the taxing state. Section 46.16.010 of the Revised Code of Washington does not *establish* a motor vehicle tax for that state. The tax is provided for in other provisions. This section

² A summary of excerpts of state statutes is contained in Appendix A hereto.

merely provides for penal sanctions for driving in that state without a proper license and display plates. Other sections of the Washington statute "require" the tax (Rev. Code of Wash., § 46.16.060, et seq.).

The Attorney General of the State of Virginia has in effect construed the term "required" as meaning "imposed." On the question of motor vehicle tax exemption for servicemen, the following is stated in Virginia Attorney General Reports (July 1, 1958-June 30, 1959, p. 191):

"In light of the above quoted language, I am of the opinion that military personnel residing in Caroline County solely as a result of compliance with military orders stationing them at Camp A. P. Hill would be able to claim the exemption conferred by this statute, if all license fees imposed in the States of their permanent homes have been paid. This view is consistent with that heretofore taken by this office and that enunciated by the Federal courts. See, Report of the Attorney General (1954-1955), page 155; *Woodroffe v. Village of Park Forest*, (D.C. Ill.), 107 F.Supp. 906. Thus, an individual having the status under consideration would not be required to pay the motor vehicle license tax imposed by Caroline County (1) if a similar tax is imposed by the political subdivision of his permanent home State and that tax has been paid or (2) if no local tax is imposed by the political subdivision of his permanent home State. However, if a local motor vehicle license tax is imposed by the political subdivision of the permanent home State of such an individual, and that local tax has *not* been paid, he would, in my opin-

ion, be subject to the motor vehicle license tax ordinance of Caroline County. Moreover, military personnel in Virginia, who do not reside on a military post, may operate their motor vehicles in Virginia indefinitely, without paying the license tax imposed by the Commonwealth, if such personnel have paid the license fees imposed by their permanent home States.”

The California Supreme Court reaches a result contrary to that reached in the *Whiting* case. The *Whiting* case is substantially similar to this case involving as it does a serviceman stationed in Virginia and being a resident of the State of Colorado. The State of Colorado has provisions requiring motor vehicle fees and imposes criminal sanctions upon persons driving on the highway without the payment of such fees in language substantially similar to that used in the Washington statute and as used in California Vehicle Code section 4000. (See Colorado Revised Statutes, 1953, Chap. 13, Art. 5, Sec. 22 and Chap. 13, Art. 5, Sec. 1.)

The *Whiting* case was decided in 1961. Congress amended section 574 in 1962.³ The amendment did not change in any way the decision in *Whiting*. Thus, section 574 should be interpreted by assuming that

³ The section was amended in 1962 by Public Law 87-771, such amendment being designed to prevent the taxation by the state of the personal property of a serviceman which remains with his family in a state (which could not have taxed such property under the section so long as he was stationed in such state) after transfer of the serviceman overseas or to a post in a different state to which he did not or could not take his family (1962 U.S. Code Cong., Adm. News, p. 2841).

Congress was aware of the judicial decision, and failure to make changes in a particular respect when the subject was before the Congress is indicative of an intention to leave the law unchanged in that respect (*Allen v. Grand Central Aircraft Co.*, 347 U.S. 535, 98 L.Ed. 933, 74 S.Ct. 745; *Jeanese Inc. v. United States*, 227 F.Supp. 304; *Kusior v. Silver*, 54 Cal.2d 603, 354 P.2d 657).

The respondent and the California Supreme Court rely upon the case of *Dameron v. Brodhead*, 345 U.S. 322, 97 L.Ed. 1041, 73 S.Ct. 721. That case is not in point. In *Dameron*, the court was concerned with taxes assessed by the City of Denver on household goods kept in an apartment in that city by an Air Force officer who was a resident of Louisiana. The court dealt only with the provisions of subdivision I of section 574 of the Relief Act, stressing the language providing that "personal property shall not be deemed to be located or present in or to have a situs for taxation in" the state where the person sought to be taxed was present solely because of military or naval orders. The case did not deal with the proviso in subdivision 2 pertaining to taxation of motor vehicles.

The decision of the California Supreme Court does not accomplish the result sought by Congress; namely, to exempt from state statutes regarding payment of fees for use of the highways only those servicemen who had *actually paid* the fees to their resident state.

The decision frustrates those purposes of registration designed to promote motor vehicle identification

in aid of proper law enforcement. The decision authorizes nonresident servicemen to operate their vehicles in this State without the registration of the vehicle or the obtaining of license plates since California has no statutory provisions for the registration of such vehicles and the issuing of license plates without the payment of fees.

It was noted in *Stoddart v. Peirce*, 53 Cal.2d 105, 346 P.2d 774, that the vehicle registration statutes were adopted "for the purpose of protecting innocent purchasers, and to afford identification of vehicles and of persons responsible in cases of accident and injury." That registration is important in criminal cases involving stolen cars was noted by the court in *People v. Galceran*, 178 Cal.App.2d 312, 316, 2 Cal. Rptr. 901.

Public safety dictates that all vehicles be properly registered. If respondent's argument were adopted, it would mean a serviceman from the State of Washington stationed in California for a number of years (respondent has been here over six years) could purchase a new car each year and never register a single vehicle in California so long as he did not drive in his home state. A car ineffectively licensed is not only tempting to the car thief, but it becomes a public hazard in the event of an accident. In the hit-and-run accident witnesses almost instinctively look for the license plate on the hit-run car.

There is no doubt that Congress had these considerations in mind in treating motor vehicles differently

than personal property generally and in providing that license fees would be paid either in the state of residence or in the state where the serviceman was stationed thus insuring effective registration and identification of motor vehicles.

CONCLUSION

Petitioner submits that the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 do not prohibit the State of California from taxing respondent's vehicle and imposing criminal sanctions for nonpayment of such taxes. The decision of the California Supreme Court holding to the contrary should be reversed.

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APPENDIX A

ALABAMA:

Code of Alabama, Title 51

§ 693: "The following license and registration fee shall be charged on automobiles and motor cars kept for private use: . . . before any private automobile or any motorcycle shall be used on any public highway the proper license tag therefor must be procured and securely attached"

§ 75: "Each and every motor vehicle operator who operates a motor vehicle upon any city street or other public highway of or in this state shall at all times keep attached and plainly visible on the rear end of such motor vehicle a license tag or license plate as prescribed and furnished by the department of revenue at the time the owner or operator purchases his license.

"Anyone violating the provisions of this section shall be guilty of a misdemeanor"

ALASKA:

Alaska Statutes 1962, Title 28

§ 10.030: "No person may drive or move, nor may any owner knowingly permit to be driven or moved, upon a highway a motor vehicle, trailer, or semi-trailer which has not been registered under this chapter."

§ 10.200: "(a) An annual license tax is levied for the privilege of driving or moving a vehicle subject to registration under this chapter upon any highway in the state. . . ."

§ 10.590: "A person who drives or moves, or an owner who knowingly permits to be driven or moved, upon a highway in the state, a vehicle required to be

registered which has not been registered or for which a certificate of title is not issued is guilty of a misdemeanor, . . .”

§ 10.040: “Every motor vehicle, trailer, or semi-trailer when driven or moved upon a highway is subject to the registration provisions of this chapter. . .”

ARIZONA:

Arizona Revised Statutes

§ 28-302: “A. Every owner of a motor vehicle, trailer, or semi-trailer, before it is operated upon any highway in this state, shall apply to the vehicle division for a certificate of title thereto and registration thereof. . . .”

§ 28-326: “. . .B. A person is guilty of a misdemeanor who:

1. Being the owner thereof, operates or knowingly permits to be operated upon a highway, a motor vehicle, trailer, or semi-trailer required by law to be registered which does not display thereon the number plates assigned thereto by the vehicle division for the current registration year. . . .”

ARKANSAS:

Arkansas Statutes, 1947, Title 75

§75-132: “Every motor vehicle, trailer, semi-trailer, and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this Act”

§75-131: “It shall be a misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has

not been issued or applied for or for which the appropriate fee has not been paid when and as required hereunder. . . .”

COLORADO:

Colorado Revised Statutes, 1963, Title 13

§13-3-22: “(1) (a) It shall be unlawful for any person to commit any of the following acts:

“(b) To operate, or for the owner thereof knowingly to permit the operation upon a highway of any motor vehicle, trailer, or semitrailer, . . which is not registered or which does not have attached thereto and displayed thereon the number plate or plates assigned thereto by the department for the current registration year, . . .

(2) Any person who shall be guilty of committing any of the acts as set forth in subsection (1) of this section, shall be deemed guilty of a misdemeanor. . . .”

CONNECTICUT:

Connecticut General Statutes

§14-12: “No motor vehicle shall be operated or towed upon any highway, except as otherwise expressly provided, without first being registered with the commissioner, . . . Except as herein provided, any person who operates or allows to be operated any motor vehicle upon any public highway before the same has been registered, or who registers any motor vehicle of which he is not the owner, shall be fined not more than fifty dollars. . . .”

DELAWARE:

Delaware Code, Title 21

21 Del.C. § 2101: "No person shall drive or move, nor shall any person, being the owner of a vehicle, knowingly permit to be driven or moved upon any highway any vehicle, . . of a type required to be registered hereunder which is not registered. . . ."

21 Del.C. § 2115: "No person shall—(1) Operate, or being the owner of any motor vehicle, trailer, or semi-trailer, knowingly permit the operation upon a highway of any motor vehicle, trailer, or semi-trailer which is not registered or which does not have attached thereto and displayed thereon the number plate or plates assigned thereto by the Department, . . ."

21 Del.C. § 2116: "(a) Whoever violates any provision of this chapter shall . . . be fined . . . or imprisoned. . . ."

FLORIDA:

Florida Statutes, Chapter 320

F.S. § 320.34: "No motor vehicle, trailer, semitrailer or motorcycle sidecar shall be operated upon or driven over the highways of this state, or any road or street therein, unless the same be registered according to law and the registration fee paid."

F.S. § 320.57: "Any person convicted of violating any of the provisions of this chapter shall, unless otherwise provided herein, be fined . . . or be imprisoned. . . ."

GEORGIA:

Code of Georgia, Title 68

Ga. Code §68-201: "Every owner of a motor vehicle, trailer, tractor (except tractors used only for agricultural purposes) or motorcycle, shall, on or before the first day of April in each year, before he shall operate such motor vehicle, tractor, trailer or motorcycle, or within three days following the purchase of a new or unregistered motor vehicle, trailer, tractor (except tractors used only for agricultural purposes), or motorcycle, register such vehicle in the office of the State Revenue Commissioner, and obtain a license to operate the same for the ensuing year; . . ."

Ga. Code §68-9901: "Any person, firm, or corporation owning or operating any motor vehicle described in section 68-201 on any public highway or street after March 1st of each year, without complying with the provisions of that section, shall be guilty of a misdemeanor."

HAWAII:

Revised Laws of Hawaii, Title 21

§160-2: "Every owner of a motor vehicle which is to be operated upon the public highways shall, for each vehicle owned, . . . apply to the treasurer of the county where such vehicle is to be operated, for the registration thereof. . . ."

§160-19: "Any person who violates any of the provisions of this part shall be fined . . . or imprisoned. . . ."

IDAHO:

Idaho Code, Title 49

§49-107: "a. Every owner of a motor vehicle, trailer or semi-trailer who intends to operate the same upon any highway in this state shall before the same is so operated, apply to the assessor of the county in which he resides and obtain the registration thereof, . . ."

§49-125: "It shall be unlawful for any person to commit any of the following acts:

1. To operate or for the owner thereof to permit the operation upon a highway of any motor vehicle, trailer, or semi-trailer which is not registered and which does not have attached thereto and displayed thereon the number plate or plates assigned thereto for the current registration year, . . ."

§49-147: "a. It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state declared to be a felony. . . ."

ILLINOIS:

Smith-Hurd Illinois Statutes, Chapter 95½

S.H.A. ch. 95½, § 3-401: "It is a misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which the appropriate fee has not been paid when and as required hereunder, . . ."

INDIANA:

Indiana Statutes, Title 47

§47-2601: "Except as herein otherwise provided, before any motor vehicle, motorcycle, truck, trailer, semi-trailer, tractor, farm tractor used in transportation, bus, school-bus, house car, or special farm machinery, shall be operated or driven on any public highway, the owner thereof shall register the same with the department as herein provided."

IOWA:

Iowa Code, Title XIII, Chapter 321

§321.17: "It is a misdemeanor . . . for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered, or for which the appropriate fee has not been paid when and as required hereunder."

KANSAS:

Kansas Statutes, Chapter 8

§8-127: "Every owner of a motor vehicle, trailer, or semitrailer intended to be operated upon any highway in this state shall, before the same is so operated, apply for and obtain the registration thereof, . . ."

§8-142: "It shall be unlawful for any person to commit any of the following acts:

First: To operate, or for the owner thereof knowingly to permit the operation, upon a highway of any motor vehicle, trailer, or semi-trailer, which is not registered, or for which a certificate of title has not been issued or which does not have attached thereto

and displayed thereon the number plate or plates assigned thereto by the department for the current registration year, . . .”

§8-149: “It shall be unlawful and constitute a misdemeanor, punishable by a fine . . . or by imprisonment . . . for any person to violate any of the provisions of this act, unless a different penalty is by this act otherwise prescribed.”

KENTUCKY:

Kentucky Revised Statutes, Chapter 186

§186.020: “(1) Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with regulations issued by the department, . . .”

§186.990: “(1) Any person who violates any of the provisions of KRS 186.020 . . . shall be fined not less than ten nor more than one hundred dollars for each offense.”

LOUISIANA:

Louisiana Statutes Annotated, Revised Statutes

R.S. 47:501: “Every owner of a motor vehicle, trailer or semi-trailer or other vehicle intended to be operated upon the public highways in this state shall, before operating the same, apply to the commissioner for and obtain the registration thereof and pay the State registration or license tax imposed by this Chapter. . . .”

R.S. 32:51: "No person shall operate, or permit to be operated, any motor vehicle upon the highways of this state unless it is registered with the commissioner, the license tax is paid thereon, and it is operated in accordance with the provisions of this Chapter and other laws of this state."

R.S. 32:57: "Violations of the provisions of this Chapter . . . shall, unless otherwise specifically provided, be punished by a fine . . . or by imprisonment . . . or both. . . ."

MAINE:

Maine Revised Statutes, Title 29

29 M.R.S. § 102: ". . . any resident of this State and any owner . . shall register any vehicle to be operated or to remain on any way in this State, . . .

"No motor vehicle or trailer shall be operated, or remain upon any way, unless the same is registered and equipped in accordance with this Title, . . ."

29 M.R.S. § 2303: "Whoever violates or fails to comply with any provision of this Title, or any rules or regulations established thereunder, when no other penalty is specifically provided, shall be punished by a fine . . . or by imprisonment . . . or by both."

MARYLAND:

Annotated Code of the Public General Laws of Maryland, Article 66 $\frac{1}{2}$

An. Code, Art. 66 $\frac{1}{2}$, § 22: "Except as herein otherwise provided, no person shall drive nor shall an owner knowingly permit to be driven upon any highway, any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of

title has not been issued or applied for or for which the appropriate fee has not been paid . . .

“Violation of this section shall be deemed a misdemeanor, . . .”

An. Code, Art. 66½, § 23: “Every motor vehicle, trailer, and semi-trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this article . . .”

MASSACHUSETTS:

Annotated Laws of Massachusetts, Chapter 90

C. 90, § 9: “No person shall operate, push, draw or tow any motor vehicle or trailer, and the owner or custodian of such a vehicle shall not permit the same to be operated, pushed, drawn or towed upon or to remain upon any way . . . unless such a vehicle is registered in accordance with this chapter and carries its registration number displayed. . . .”

C. 90, § 20: “Any person convicted of a violation of any provision of this chapter the punishment for which is not otherwise provided, . . shall be punished by a fine. . . .”

MICHIGAN:

Mason's 1961 Supplement to the Compiled Laws of Michigan, 1948

Mason's 1961 Supplement § 257.216: “Every motor vehicle, trailer coach, trailer, semi-trailer and pole-trailer, when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this act. . . .”

Mason's 1961 Supplement § 257.215: “It is a misdemeanor for any person to drive or move or for

an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered and for which a certificate of title has not been issued or for which the appropriate fee has not been paid when and as required hereunder."

MINNESOTA:

Minnesota Statutes Annotated, Chapter 168

M.S.A. § 168.09: "Subdivision 1. No motor vehicle . . . shall be used or operated upon the public streets or highways of the state in any calendar year until it shall have been registered . . . and the motor vehicle tax and fees herein provided shall have been duly paid. . . ."

M.S.A. § 168.10: ". . . It shall be a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other laws of this state declared to be a felony or gross misdemeanor."

MISSISSIPPI:

Mississippi Code Annotated

Tit. 39, Div. 15, §10007-04: "Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle . . . and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license. . . ."

Tit. 39, Div. 15, §1007-22: ". . . On and after the effective date of this act any person operating a motor vehicle upon the public highways of this state who has

not complied with the provisions of this act shall . . . be guilty of a misdemeanor. . . .”

Tit. 37, Ch. 4, § 9352-03:

“ . . . There is hereby levied the following annual highway privilege tax on operators of private carriers of passengers as reasonable compensation for the use of the highways of this state: . . . ”

Tit. 37, Ch. 4, § 9352-20: “The privilege license tax levied by the provisions of this act shall be paid annually, . . . and any person owning a motor vehicle subject to taxation under the provisions of this act . . . who fails or refuses to pay such tax and obtain the privilege license required . . . shall be guilty of violating the provisions of this act, and shall be liable for the amount of such tax plus a penalty. . . .”

MISSOURI:

Vernon's Annotated Missouri Statutes, Chapter 301, Title 19

V.A.M.S. § 301.020: “Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, . . . shall file . . . an application for registration. . . .”

V.A.M.S. § 301.130: “. . . 5. Before being operated on any highway of this state every motor vehicle or trailer shall have displayed the license plates or temporary permit issued by the director. . . .”

V.A.M.S. § 301.190: “1. No certificate of registration of any motor vehicle or trailer . . . shall be issued . . . unless the applicant therefor shall make application for and be granted a certificate of ownership of such motor vehicle or trailer, . . .

"4. It shall be unlawful for any person to operate in this state a motor vehicle or trailer registered under the provisions of the law unless a certificate of ownership shall have been issued as herein provided."

V.A.M.S. § 301.440: "Any person who violates any provision of sections 301.010 to 301.440 for which no specific punishment is provided, shall upon conviction thereof be punished by a fine . . . or by imprisonment . . . or by both such fine and imprisonment."

MONTANA:

Revised Codes of Montana, Title 53

§ 53-119: "Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed, . . ."

§ 53-114: "(1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall . . . file, or cause to be filed, in the office of the county treasurer . . . an application for registration. . . ."

§ 53-102: "The violations of any of the provisions of sections . . . 53-114 . . . 53-119 . . . shall constitute a misdemeanor and shall be punishable by a fine. . . ."

NEBRASKA:

Revised Statutes of Nebraska

Chapter 60, § 60-302: "Every owner of a motor vehicle shall . . . make an application for registration. . . ."

Chapter 60, § 60-325: "No person shall operate or drive a motor vehicle on the public highways unless such vehicle shall at all times carry in or upon it . . . the registration certificate furnished for it. . . ."

Chapter 39, § 39-725: "Any person, firm, association, partnership, or corporation who shall violate any of the provisions of . . . sections 60-301 to 60-343 . . . shall be deemed guilty of a misdemeanor. . . ."

NEW HAMPSHIRE:

New Hampshire Revised Statutes, Title XXI

Chap. 260, § 260:12: "Except as otherwise provided, no person shall operate, or cause to be operated, on the ways of this state any motor vehicle, trailer, semi-trailer, or tractor unless the same has been registered in accordance with the provisions of this chapter."

Chap. 262, § 262:28: "Unless otherwise herein provided, any person convicted of a violation of any provision of this title . . . shall be fined. . . ."

NEW JERSEY:

New Jersey Statutes Annotated, Title 39

N.J.S.A. 39: 3-4: "Except as hereinafter provided, every resident of this State and every non-resident whose automobile or motorcycle shall be driven in this State shall before using such vehicles on the public highways, register the same, and no automobile or motorcycle shall be driven unless so registered"

"No person owning or having control over any unregistered motor vehicle shall permit the same to be parked or to stand on a public highway. . . ."

"Any person violating the provisions of this section shall be subject to a fine not exceeding \$100.00, . . ."

NEW MEXICO:

New Mexico Statutes, Chapter 64, Article 3

§64-3-1. "It is a misdemeanor for any person to violate any provision of this article."

§64-3-2: "Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this act. . . ."

NEW YORK:

Consolidated Laws of New York; Vehicle and Traffic Law, article 14

Vehicle and Traffic Law § 401: "1. Registration by owners. a. No motor vehicle shall be operated or driven upon the public highway of this state without first being registered in accordance with the provisions of this article, except as otherwise expressly provided in this chapter.

"b. Every owner of a motor vehicle which shall be operated or driven upon the public highways of this state shall, . . . cause to be presented . . . an application for registration

" . . . 18. The violation of subdivision one of this section shall constitute a misdemeanor. . . ."

NEVADA:

Nevada Revised Statutes, Title 43, Chapter 482

N.R.S. 482.205: "Except as otherwise provided in this chapter, every owner of a motor vehicle, trailer or semitrailer intended to be operated upon any highway in this state shall, before the same can be operated, apply to the department for and obtain the registration thereof."

N.R.S. 482.545: "It shall be unlawful for any person to commit any of the following acts:

"1. To operate, or for the owner thereof knowingly to permit the operation of, upon a highway any motor vehicle, trailer or semitrailer which is not registered or which does not have attached thereto and displayed thereon the number of plate or plates assigned thereto by the department for the current registration year, . . ."

N.R.S. 482.555: ". . . it shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this chapter"

NORTH CAROLINA:

General Statutes of North Carolina, Division IV, Chapter 20, Article 3

§ 20-50: "Every owner of a vehicle intended to be operated upon any highway of this state and required by this article to be registered shall, before the same is so operated, apply to the department for and obtain the registration thereof, the registration plates therefor, and a certificate of title therefor, and attach the registration plates to the vehicle. . . ."

§ 20-111: "It shall be unlawful for any person to commit any of the following acts:

"(a) To operate or for the owner thereof knowingly to permit the operation upon a highway of any motor vehicle, trailer, or semi-trailer which is not registered or for which a certificate of title has not been issued. . . ."

§ 20-176: "(a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this article. . . ."

NORTH DAKOTA:

North Dakota Century Code, Title 39

§ 39-04-18: "1. Except as provided in this section, every motor vehicle . . . operated or intended to be operated upon any highway, road, or street in this state shall be registered annually with the motor vehicle registrar

"3. In addition to any other penalties provided by law, any person violating any of the provisions of this section shall be guilty of a misdemeanor. . . ."

§ 39-04-37: "It shall be unlawful for any person to commit any of the following acts:

"1. To operate, or for the owner thereof knowingly to permit anyone to operate, upon a highway any motor vehicle . . . which is not registered. . . ."

OHIO:

Ohio Revised Code, Title 45

§ 4503.10: "Every owner of a motor vehicle and every person mentioned as owner in the last certificate of title, bill of sale, or sworn statement of ownership of a motor vehicle which is operated or driven upon the public roads or highways shall . . . cause to be filed . . . in the office of the registrar of motor vehicles . . . a written application . . . for registration. . . ."

§ 4503.11: "No person who is the owner or chauffeur of a motor vehicle operated or driven upon the public roads or highways shall fail to file annually the application for registration or to pay the tax therefor."

§ 4503.99: "... (c) Whoever violates section 4503.11 . . . of the Revised Code shall be fined. . . ."

OKLAHOMA:

Oklahoma Statutes Annotated, Title 47

47 Okl. St. Ann. § 22.3: "Every owner or possessor of one or more vehicles . . . before operating the same in this State . . . shall . . . file with the Commission . . . an application for the registration of such vehicle or vehicle. . . ."

47 Okl. St. Ann. § 22.23: "It shall be unlawful for any person to commit any of the following acts: . . .

"(e) To operate a vehicle without proper license plates, or on which all taxes due the State of Oklahoma have not been paid. . . .

"(i) To operate a vehicle on the highways of this State . . . without proper identification or number plates. . . .

"Any one violating any of the provisions heretofore enumerated in this section shall be guilty of a misdemeanor. . . .

"Any violation of any portion of this Act where a specific penalty has not been imposed shall constitute a misdemeanor. . . ."

OREGON:

Oregon Revised Statutes, Title 39, Chapter 481

O.R.S. 481.105: "(1) Every owner of a motor vehicle, trailer or semitrailer, before he operates it upon the highways, shall . . . cause to be filed . . . an application for registration"

O.R.S. 481.990: "... any violation of the provisions of this chapter, including the failure to obtain the proper permit or license required by this chapter, is punishable, upon conviction, by a fine . . . or by imprisonment . . . or by both"

PENNSYLVANIA:

Pennsylvania Statutes, Title 75

75 P.S. § 401: "Except as is hereinafter provided, no motor vehicle, tractor, trailer or semi-trailer shall be operated upon any highway in this Commonwealth until such vehicle or tractor shall have been properly registered with the department. . . .

"Any person violating any of the provisions of this section, shall upon summary conviction before a magistrate, be sentenced to pay a fine. . . ."

RHODE ISLAND:

General Laws of Rhode Island, Title 31

§ 31-3-1: "It is a misdemeanor for any person to operate or for an owner knowingly to permit to be operated upon any highway any vehicle of a type required to be registered hereunder which is not registered and for which the appropriate fee has not been paid."

§ 31-3-2: "Every motor vehicle, trailer, semitrailer, and pole trailer when operated upon a highway shall be subject to the registration provisions . . . of this title. . . ."

SOUTH CAROLINA:

Code of Laws of South Carolina, Title 46

§ 46-11: "Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. It shall be a mis-

demeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter.”

SOUTH DAKOTA:

South Dakota Code, Title 44

§ 44.0102: “Every owner of a motor vehicle, motorcycle, truck tractor, road tractor, trailer, or semi-trailer, or house car, house trailer, or trailer coach which shall be operated or driven upon the public highways of this state, shall . . . cause to be presented to the county treasurer of his county . . . application for the registration. . . .”

TENNESSEE:

Tennessee Code, Title 59

§ 59-301: “Every motor vehicle, when driven or moved upon a highway, and every mobile home or house trailer when occupied shall be subject to the registration and certificate of title provisions . . . of this title. . . .”

§ 59-302: “It is a misdemeanor for any person to drive or move or for any owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered . . . which is not registered or for which certificate of title has not been issued or for which the appropriate fee has not been paid when and as required. . . .”

TEXAS:

**Vernon's Annotated Revised Civil Statutes
of Texas, Title 116**

V. Ann. Civ. St. art. 6675a-2: "(a). Every owner of a motor vehicle, trailer or semitrailer used or to be used upon the public highways of this State shall apply each year to the State Highway Department through the County Tax Collector of the county in which he resides for the registration of each such vehicle. . . ."

Vernon's Annotated Penal Code of Texas, Title 13

V. Ann. P.C. art. 804: "Whoever operates upon any public highway a motor vehicle which has not been registered as required by law shall be fined not to exceed two hundred dollars."

UTAH:

Utah Code Annotated, Title 41

§ 41-1-18: "It shall be unlawful for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been paid when and as required hereunder. . . ."

§ 41-1-19: "Every motor vehicle, combination of vehicles, trailer, and semitrailer, when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this act. . . ."

§ 41-1-142: " . . . (k) It is a misdemeanor for any person to violate any of the provisions of this act unless such violation is by this act or other law of this state declared to be a felony."

VERMONT:

Vermont Statutes Annotated, Title 23

23 V.S.A. § 301: "Residents as defined in section 4 of this title, except as provided in section 301a of this title, shall annually register motor vehicles owned or leased for a period of more than thirty days and operated by them, unless currently registered in Vermont. A person shall not operate a motor vehicle nor draw a trailer or semi-trailer on any highway unless such vehicle is registered as provided in this chapter."

23 V.S.A. § 1707: "A person who violates a provision of this title . . . shall be fined . . . or imprisoned . . . or both."

VIRGINIA:

Code of Virginia, Title 46.1

§ 46.1-41: ". . . every person . . . owning a motor vehicle, trailer or semitrailer intended to be operated upon any highway in this State shall, before the same is so operated, apply to the Division for and obtain the registration thereof and a certificate of title therefor."

§ 46.1-64: "No person shall:

"(a) Operate or permit a motor vehicle, trailer or semitrailer, controlled by him to be operated upon a highway which is not registered or for which a certificate of title has not been issued. . . ."

§ 46.1-16: "(a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of chapters 1 through 4 (§§ 46.1-1 to 46.1-347) of this title, unless such violation is by any of such provisions declared to be a felony. . . ."

WASHINGTON:

Revised Code of Washington Annotated, Title 46

§ 46.16.010: "It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided. . . ."

§ 46.64.050: "It shall be a misdemeanor for any person to violate any of the provisions of this title unless violation is by this title or other law of this state declared to be a felony or a gross misdemeanor"

WEST VIRGINIA:

West Virginia Code of 1961, Chapter 17A

§ 1721 (119): "It is a misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required hereunder, . . ."

§ 1721 (120): "Every motor vehicle, trailer, semi-trailer, and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter. . . ."

WISCONSIN:

**Wisconsin Statutes Annotated, Title XLIV;
Vehicle Code, Chap. 341**

W.S.A. 341.04: “(1) It is unlawful for an owner to consent to being operated on any highway of this state any motor vehicle, mobile home, trailer or semi-trailer or any other vehicle for which a registration fee is specifically prescribed unless at the time of operation the vehicle in question either is registered in this state or is exempt from registration in this state

“(3) Any person violating subs. (1) . . . may be fined . . . or imprisoned . . . or both”

WYOMING:

Wyoming Statutes, Title 31

§ 31-16: “(a) Every owner of a motor vehicle, house trailer, trailer coach, trailer or semi-trailer, shall for each motor vehicle, house trailer, trailer coach, trailer or semi-trailer owned, . . . file or cause to be filed in the office of the county treasurer . . . an application for registration

“(f) If the owner of any motor vehicle, house trailer, trailer coach, trailer or semitrailer, coming under the provisions of this article shall fail to make application for registration, he shall be subject to the penalties provided for in section . . . [31-29].

“(g) No owner shall be required to pay the state registration fee or county registration fee provided for, upon any motor vehicle for any year during which said motor vehicle is not to be operated or driven upon the public highways of the State of Wyoming”

§ 31-29: “The violations of any of the provisions of this article . . . shall be deemed a misdemeanor. . . .”

§ 31-32: "The state board of equalization or the county treasurer . . . shall not . . . register or renew the registration of any motor vehicle, unless and until the owner thereof shall make application for and be granted an official certificate of title for such vehicle

"The owner of a motor vehicle registered in this state shall not . . . operate or permit the operation of any such vehicle upon any highway without first obtaining a certificate of title therefor from the state board of equalization or the county clerk . . . and any person violating any provision of this section shall be punished as provided in section 31-48, . . ."

§ 31-48: "Any person who shall be convicted of a violation of any of the provisions of this act shall be guilty of a misdemeanor. . . ."

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 40

CALIFORNIA, PETITIONER

v.

LYMAN E. BUZARD

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

Respondent is a resident of the State of Washington who is stationed in California pursuant to military orders (R. 8, 12-15, 26-27). While he was temporarily assigned to Squadron Officer's School in Alabama, petitioner purchased a car in that State, registered it there, and paid the fees required by Alabama (R. 15-17). On his return to California, he was charged with violating the State law which required him to obtain a California registration for the car and to pay California's license fees and excises on the use of motor vehicles. The Justice Court found him guilty, fined him fifty dollars, suspended the judgment, and placed him on probation for six months (R. 5). The District Court of Appeals affirmed (R.

38-44). The Supreme Court of California reversed (R. 45-49).

In this Court, as in the courts below, respondent relies upon subsection 2(b) of Section 514, 50 U.S.C. App. 574, which provides that a serviceman's exemption from taxation by a State where he is temporarily stationed:

* * * shall include * * * licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State * * * of which the person is a resident * * * has been paid.¹

It is agreed that the exemption granted by subsection 2(b) is conditional upon compliance with the proviso. The sole issue in this case therefore turns upon its meaning. Respondent argues that since the State of Washington requires no motor-vehicle fees of a resident who does not use its highways, there was no "license, fee, or excise required by" his State of residence.² We believe that the proviso is satisfied only

¹ Since it is plain that the taxes which California seeks to impose (unlike those imposed by Mississippi in the *Snapp* case, No. 16) are "licenses, fees, or excises imposed in respect to motor vehicles," and that the respondent's automobile (unlike the immobile trailer in the *Snapp* case) is a motor vehicle within the meaning of the federal statute, subsection 2(b) is the only possible source of a federal exemption from the California tax.

² Petitioner does not contend, and could not, that Alabama was his state of residence for the purposes of satisfying the proviso to subsection 2(b). Section 514(1) provides specifically that, for purposes of the statute, a "person shall not be deemed to have lost a residence * * * in any State * * * solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence * * * in * * * any other State * * * solely by reason of being, so absent." Moreover, the proviso to subsection 2(b) requires that fees

where there has been an actual payment of whatever fees the State of residence requires from those who in fact use its highways.³

The effect of the proviso, as respondent construes it, is to subject the serviceman to the requirements of the State in which he is stationed only when he has failed to comply with the valid requirements of his home State. Since the States almost uniformly base their licensing requirements on use of the motor vehicle within the State, the result is that the serviceman either is subject to no licensing requirements or to multiple licensing requirements. He is subject to no requirements (as respondent urges in this case) when he has never driven his motor vehicle in his home State; he then has never become subject to the licensing requirements of that State, the proviso is not applicable, and Section 514(2)(b) prevents the State in which he is stationed from imposing its licensing requirements. He is subject to multiple licensing requirements if he drives his vehicle in his home State under circumstances which subject him to that State's licensing requirements, but fails to comply therewith. He then would be subject to the licensing requirements of his home State and, under the proviso, also to the licensing requirements of the State in which he is stationed. Not only is there no indication that Congress had any intention to impose

have been paid to the State of which the serviceman is presently a resident, and petitioner was no longer connected with Alabama when California sought to impose its fees.

³ We have set forth more fully our views about the proviso in Section 514(2)(b) in our *amicus* brief filed in the companion case of *Snapp v. Neal*, No. 16.

such a bizarre sanction to assist the domiciliary State in collecting its taxes, but the obvious purpose of the proviso is quite different.

If Congress had simply forbidden the State where a serviceman was stationed from imposing a license fee with respect to the motor vehicle or its use (*i.e.*, if Congress had not added the proviso to Section 514(2)(b)), the immediate result would have been that a serviceman stationed in a State other than his home State would probably not have had to comply with the licensing requirements of any State. Section 514 would exempt him from the requirements of the State in which he was stationed; and, since he was not using the highways of his home State, that State would not require him to register his vehicle and pay privilege taxes. He would have little incentive to register voluntarily and pay taxes. Moreover, since the payment of highway privilege taxes is a universal prerequisite to the registration of motor vehicles and the issuance of license plates, the State in which he was stationed might well have unlicensed vehicles using its highways with all of the accompanying problems of identification for theft and accident purposes.

By providing in Section 514(2) an exemption for a non-resident serviceman from the motor vehicle licenses, fees, and excises of the State in which he is operating his vehicle conditioned upon his payment of the motor-vehicle privilege taxes of his home State, Congress insured that a serviceman stationed away from his home State would pay the costs of highway maintenance either to his home State or to the State in which he operated his vehicle. Moreover, no vehi-

cles belonging to servicemen stationed away from their State of domicile would be using the highways without license plates.

In short, in contrast to respondent's contention that the proviso permits a serviceman to avoid all licensing requirements if his vehicle was not taken into his home State, it appears that the purpose of the proviso was to guarantee that a serviceman would pay the license fees of at least one State—either his home State or the State in which he was stationed. The proviso was intended to recognize the legitimate concerns of the States by assuring that servicemen would obtain the registration which is necessary to regulation of the highways and would pay the fees needed to maintain public roads. This deference to State interests was accomplished without subjecting servicemen to multiple-licensing requirements, by granting a conditional immunity from the requirements of the State in which the serviceman was stationed.

There are, it is true, equities favoring respondent's case. Respondent notes that he is willing to defer to the regulatory policies of California; he would register his car in California if he were not required to pay license fees. It might also be noted that, on the particular facts of this case, the serviceman has not wholly failed to pay license fees; he paid those required by Alabama. But Congress did not require the States to allow registration of a serviceman's vehicle without payment of fees; and it did not require a State where a serviceman is temporarily stationed to recognize the license issued by another State where he was also only temporarily stationed. See

n. 2, *supra*, p. 2. It specifically permitted the State where the serviceman is stationed to impose its "taxation" including "licenses, fees, or excise" unless the serviceman "has * * * paid" such taxes to "the State * * * of which [he] is a resident." Like any civilian, the serviceman is subject to the multiple licensing requirements of the various States in which he temporarily resides and uses his automobile, unless he has paid the fees required by his home State.

This result is consistent with the principal purpose of Section 514—to reserve the taxation of the personal property of a serviceman to his State of residence or domicile (*Dameron v. Brodhead*, 345 U.S. 322, 326; *United States v. Arlington County, Commonwealth of Virginia*, 326 F. 2d 929, 933 (C.A. 4))—yet it allows other States which have a close concern with highway regulation and maintenance to impose their motor-vehicle license and fee requirements upon a serviceman who does not register his motor vehicle and pay the appropriate fees in his home State. Consequently, the statute prevents a serviceman who owns a motor vehicle from escaping completely from paying for the privilege of using the highways. And since payment of such fees universally entitles a serviceman to register and obtain license plates, no problem of unlicensed vehicles can arise.

CONCLUSION

The judgment of the Supreme Court of California
should be reversed.

Respectfully submitted.

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AUGUST 1965.

FILED

SEP 22 1965

JOHN F. DAVIS, CLERK

No. 40

In the Supreme Court of the United States

OCTOBER TERM, 1965

CALIFORNIA, Petitioner

VS.

LYMAN E. BUZARD

On Writ of Certiorari to the Supreme Court
of the State of California

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 40

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LYMAN E. BUZARD,

Respondent.

On Writ of Certiorari to the Supreme Court
of the State of California

Brief for Respondent

QUESTION PRESENTED

Whether the Soldiers' and Sailors' Relief Act of 1940, 50 U.S.C. App., § 574, exempts a nonresident serviceman stationed in California from payment to California of vehicle licenses, fees and excises, prior to the time he is liable to his State of residence for its vehicle licenses, fees and excises.

STATUTES INVOLVED**A. Federal Statutes.****1. THE SOLDIERS' AND SAILORS' RELIEF ACT, 50 U.S.C. APP. § 574.**

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

B. California Statutes.

1. CALIFORNIA REVENUE AND TAXATION CODE, SECTION 10751.

A license fee is hereby imposed for the privilege of operating upon the public highways in this State any vehicle of a type which is subject to registration under the Vehicle Code.

2. CALIFORNIA REVENUE AND TAXATION CODE, SECTION 10752.

The annual amount of the license fee shall be a sum equal to two (2) percent of the market value of the vehicle as determined by the department.

3. CALIFORNIA REVENUE AND TAXATION CODE, SECTION 10758.

The license fee imposed under this part is in lieu of all taxes according to value levied for State or local purposes on vehicles of a type subject to registration under the Vehicle Code whether or not the vehicles are registered under the Vehicle Code.

4. CALIFORNIA VEHICLE CODE, SECTION 9250.

A registration fee of eight dollars (\$8) shall be paid to the department for the registration of every vehicle of a type subject to registration, except as are expressly exempted under this code from the payment of registration fees, and except those referred to in Section 9253.

5. CALIFORNIA VEHICLE CODE, SECTION 6701.

Any nonresident owner of a foreign vehicle who is a member of the Armed Forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty.

6. CALIFORNIA VEHICLE CODE, SECTION 4000.

No person shall drive, move, or leave standing any motor vehicle, trailer, semi-trailer, pole or pipe dolly, or auxiliary dolly upon a highway unless it is registered and the appropriate fees have been paid under this code.

C. Washington Statutes.**1. REVISED CODE OF WASHINGTON, SECTION 46.12.010.**

Certificates required to operate and sell vehicles. It shall be unlawful for any person to operate any vehicle in this state under a certificate of license registration of this state without securing and having in full force and effect a certificate of ownership therefor and it shall further be unlawful for any person to sell or transfer any vehicle without complying with all the provisions of this chapter relating to certificates of ownership and license registration of vehicles. Pro-

vided, That the provisions of this section relating to the sale of vehicles shall not apply to the first sale of vehicles by manufacturers and dealers: Provided Further, That nothing in this title shall be construed to prevent any person entitled thereto from securing a certificate of ownership upon a vehicle without securing a certificate of license registration and vehicle license plates, when, in the judgment of the director of licenses, it is proper to do so.

2. REVISED CODE OF WASHINGTON, SECTION 46.12.020.

Prerequisite to issuance of vehicle license and plates. No vehicle license number plates or certificate of license registration, whether original issue or duplicates, shall be issued or furnished by the director of licenses unless the applicant therefor shall at the same time make satisfactory application for a certificate of ownership or shall present satisfactory evidence that such a certificate of ownership covering such vehicle has been previously issued.

3. REVISED CODE OF WASHINGTON, SECTION 46.12.030.

Application for certificate of ownership shall be upon a blank form to be furnished by the director of licenses and shall contain:

(1) a full description of the vehicle, which said description shall contain the manufacturer, serial number if it be a trailer, the motor number or proper identification number if it be a motor vehicle, and any distinguishing marks or identification;

(2) a statement of the nature and character of the applicant's ownership, and the character of any and all encumbrances other than statutory liens upon said vehicle;

(3) such other information as the director of licenses may require: *Provided*, That the director of licenses may in any instance, in addition to the information required on said application, require additional infor-

mation and a physical examination of the vehicle or of any class of vehicles, or either.

Such application shall be subscribed by the applicant and be sworn to by him before a notary public or other officer authorized by law to take acknowledgment of deeds, or other person authorized by the director of licenses to certify to the signature of the applicant upon such application.

4. REVISED CODE OF WASHINGTON, SECTION 46.16.010.

It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided: *Provided*, That these provisions shall not apply to farm tractors.

5. REVISED CODE OF WASHINGTON, SECTION 46.16.060.

Except as otherwise specifically provided by law for the licensing of vehicles, there shall be paid and collected annually for each calendar year or fractional part thereof and upon each vehicle a license fee in the sum of six dollars and ninety cents: *Provided*, however, That the fee for licensing each house moving dollie which is used exclusively for moving buildings or homes on the highway under special permit as provided for in chapter 46.44, shall be twenty-five dollars.

6. REVISED CODE OF WASHINGTON, SECTION 82.44.020.

An excise tax is imposed for the privilege of using in the state any motor vehicle, except those operated under dealer's licenses. The annual amount of such excise shall be two percent of the fair market value of such vehicle: *Provided*, That in no case shall the tax be less than one dollar: *Provided further*, That during the period of changeover to the staggered system of registration of those motor vehicles as defined in

RCW 46.16.400 the excise tax may be computed and imposed for periods of less than one year sufficient to make the collection thereof coincide with the collection of license fees on such vehicles.

ARGUMENT

Respondent, a citizen of Washington bought his car in Alabama while on extended temporary duty there. He registered it in Alabama and paid all required fees and taxes. When he returned to California, his permanent duty station, he sought to register his car in California but public officials refused when he declined to pay the fees demanded. He was thereafter convicted of violation of Vehicle Code Section 4000, making it a misdemeanor to drive a vehicle on California highways without registering it and paying "appropriate fees".

The pertinent California statutes require the payment of a vehicle registration fee of eight dollars (Vehicle Code, Section 9250) and also the annual payment of a motor vehicle "license fee", imposed for the privilege of operating the vehicle on California public highways (Revenue and Taxation Code, Section 10751). The annual license fee, which is in lieu of ad valorem taxes on the vehicle (Revenue and Taxation Code, Section 10758), is set at 2% of the market value of the vehicle (Revenue and Taxation Code, Section 10752).

The California Supreme Court, in a unanimous decision, reversed respondent's conviction and ruled that the State officials had improperly conditioned registration of his car on payment of licenses, fees or excises from which he was exempt under the terms of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App., § 574.

I. Taxation, Not Registration, Is the Issue.

From the outset respondent has admitted that any State has the right under its police power to require the registration of vehicles using its highways. Respondent stated this in Justice Court (T.R. 27) and has consistently taken the same position since that time. The California Supreme Court recognized that this was so:

"Defendant does not contend that California may not, as an exercise of its police power, require him to register his automobile. In fact, his attempt to register the vehicle independently of the payment of fees and penalties was frustrated by the department. Defendant's position is simply that the Soldiers' and Sailors' Civil Relief Act of 1940 (hereinafter the Relief Act) prohibits the collection of such fees as an incident to a proper exercise of the police power or otherwise. As a consequence of the narrow question thus raised by the defendant, contentions which look to the purpose of registration in furtherance of proper law enforcement and administration fail to address themselves to the issue." (T.R. 46-47.)

Petitioner's brief nevertheless devotes itself to an argument which confuses registration with taxation (Brief, page 11). The Solicitor General's Memorandum likewise attempts to overturn the California Supreme Court's judgment by arguing that it affects registration (Memorandum, page 5).

Respondent has never objected to registering his car in California; he has objected only to the imposition of taxes as a condition to such registration. It is to be noted that respondent sought to register his car immediately upon returning to California but officials of the State refused to register it. Their concern was not one of public safety; the concern which petitioner purports to express now in its brief. Quite the opposite. *Their concern was with the collection of revenue.* If petitioner were to be the least bit

candid, it would admit this and cease attempting to justify its taxes by riding on the coattails of a registration and public safety argument.

The Solicitor General's argument proceeds on the non sequitur that the issuance of plates or other identification to nonresident servicemen is made impossible unless the States are permitted to collect from those servicemen *all* of the ascertained fees, licenses and exercises which they exact of their residents. Its conclusion is that Congress could not have intended that there be registration of vehicles without the "payment of fees." The answer to this is that the "fees" which were demanded of respondent, as a condition to registration, were for the most part completely unassociated with registration. They are taxes imposed for the privilege of driving on the highways of the State once the privilege is sought to be enjoyed. Their collection is timed so that they are paid at the time of registration but this is their only connection with registration.

Of the \$108.00 demanded of respondent at the time he sought to register his car in California, \$8.00 was specifically charged for "registration." (Motor Vehicle Code, Section 9250.) The remainder was for the license fee, excise taxes and penalties (Revenue and Taxation Code, Sections 10752, 10758). The Solicitor General makes no attempt to justify the demand for this one hundred dollars over and above what the State itself defined as being the fee for registration of the vehicle.

II. The Exemption of the Relief Act Is Denied Only to That Serviceman Who Is in Arrears on Licenses, Fees and Excises Presently Due and Owing by His State of Residence.

A. WASHINGTON HAD NOT REQUIRED THE PAYMENT OF ANY LICENSE, FEE OR EXCISE AT THE TIME OF RESPONDENT'S ARREST.

The provisions of Section 574 exempt a non-resident serviceman from payment of "licenses, fees or excises imposed

in respect to motor vehicles or the use thereof: Provided, That the license, fee or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid." The serviceman's State of residence in this case is Washington, and at the time he was arrested in California no license, fee or excise was required of him by Washington.

The only fees imposed on the vehicles of Washington residents are an annual \$6.90 "license fee" (RCW 46.16.060) and an annual motor vehicle excise tax in the amount of 2% of the market value of the vehicle (RCW 82.44.020). Neither the license fee nor the excise tax is required of any resident who does not use the highways of Washington during the year. Nor is either required of any resident who does use the highways during the year *until* such use commences. The license fee is an annual charge and is required only when a vehicle is operated "over and along a public highway of *this state*. . . ." (RCW 46.16.010, Emphasis Supplied). The excise tax by its own definition is for the "privilege of using *in the State* any motor vehicle. . ." (RCW 82.44.020, Emphasis Supplied).

In enacting Section 574, Congress did not define what licenses, fees and excises should be required of residents of Washington. It left to Washington itself the determination of what it would "require" of its residents. As the Washington statutes were written in 1960, at the time of respondent's arrest and conviction in California, Washington "required" nothing of its residents prior to the time they first operated their vehicles on its highways.

Respondent did not use the highways of Washington until several months after his arrest when, on his first leave, he returned to Washington and paid all fees and taxes for which he then became liable (TR 25-26).

I. "REQUIRED" AS USED IN THE RELIEF ACT MEANS "DEMANDED" OR "EXACTED".

The protection of Section 574 is extended to servicemen provided the license, fee or excise "required by the State" of which he is a resident has been paid. The word "required" as there used means just that—the license, fee or excise for which the resident has become liable and for which payment is due by him to the State.

"Require" is synonymous with "demand". *New York & P.R.S.S. Co. v. McGowin Lumber & Export Co.*, 284 Fed. 513 (1922). It means to "demand" or "exact" or "ask by authority". *Federal Lead Co. v. Swyers*, 161 Fed. 687, 692 (1908). Its traditional definition is "to ask for" and "to demand as necessary" and it is the opposite of voluntary. *People v. Robinson*, 222 Cal.App.2d 602, 608 (1962); *Duff v. Alliance Mutual Casualty Company*, 296 F.2d 506, 509 (1961).

III. The Exemption of the Relief Act Is Not Denied a Serviceman if His State of Residence Fails to Require Licenses, Fees and Excises.

This Court in *Dameron v. Brodhead*, 345 U.S. 322, 326; 97 L.ed 1041; 73 Sup. Ct. 721 (1953), stated:

"Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state or original residence whether or not that state exercised the right." (Emphasis supplied.)

This Court has thus ruled that a serviceman is afforded the protections of the Act if his state of residence imposes no tax; it follows as a matter of simple logic that if a tax is imposed as to some servicemen, but is as yet not imposed on others, that the others are protected under the Act.

The Supreme Court of California rejected petitioner's argument that Congress was in effect recognizing that all States impose licenses, fees and excises, and that it was intending to assure that the exemption would be granted only those servicemen who had paid them—whether or not their payment was yet required by the State of residence. In its opinion in this case, the Supreme Court of California stated:

"Defendant [respondent] urges that he was not required to obtain a vehicle license and plates by his domiciliary state except as a prerequisite to the operation of his vehicle 'over and along a public highway' of that state; that he has not driven his vehicle on such public highways; that, accordingly, no license charges or registration fees became due; that he has satisfied all licensing and registration obligations which that state required of him, and that he has likewise satisfied the proviso of the Relief Act. *The argument meets the literal and commonsense meaning of the pertinent statutory provision . . .* We cannot, as is urged, conclude that subdivision (2) [of Section 574] is intended to work to the serviceman's advantage only where a charge has been made by and paid to his domiciliary state. The statute is not couched in terms which flatly require the serviceman to have paid a fee, but rather in terms which accord to him the benefit when charges 'required by the State' have been paid. *These are the only charges which he must pay and when there are no charges made there must likewise be no requirement that he pay them.*" (R.T. 47. Emphasis and portion in brackets supplied.)

Civilian residents of Washington have no liability under the Washington statutes unless and until they drive on Washington highways. Washington servicemen stationed in Washington have no liability under the statutes unless and

until they drive on Washington highways. It cannot have been intended by Congress to limit the application of Section 574 to Washington servicemen stationed elsewhere *only* where they have voluntarily assumed a liability which does not otherwise exist.

IV. The California Supreme Court Correctly Interprets the Relief Act to Assure Against Multiple Taxation.

This Court in *Dameron v. Brodhead*, supra, also ruled that the Relief Act is designed to prevent multiple taxation. Indeed, in the *Dameron* case the respondent urged that the Act applied only when multiple taxation was a "real possibility", but this Court firmly refused to apply any such limitation on its application.

In the instant case, as we have pointed out, respondent bought his car while on extended temporary duty in Alabama, more than 2500 miles from his home state and more than 2000 miles from his duty station in California. He voluntarily registered his car in Alabama and paid all Alabama fees at that time. No other alternative was open to him except to attempt to register it in Washington by long distance, by mail.

Washington law has strict provisions requiring certificates of ownership as a prerequisite to registration. (Sections 46.12.010, 46.12.020, Revised Code of Washington.) Forms for ownership documents, for registration and for license plates would all have to be obtained from the responsible Washington offices, returned to the serviceman and completed by him without advice or assistance by Washington officials familiar with such documents. They would then have to be returned to Washington for processing. After they were considered and acted upon by those officials, they would have to be returned to the serviceman.

This would be the normal cumbersome routine; but further delays and hindrances could develop. Most important, however, under Section 46.12.030 of the Revised Code of Washington the applicant for a certificate of ownership must describe the vehicle and all encumbrances on it, and

“ . . . the director of licenses may in any instance, in addition to the information required on said application [for a certificate of ownership] require additional information *and a physical examination of the vehicle . . .*” (Portion in brackets and emphasis supplied.)

Under these statutes, an attempt to register a car by mail could be completely thwarted if the director chose to demand physical examination of the vehicle and it could be delayed interminably if the director chose to demand “additional information.” In such cases, the serviceman would have no alternative but to register his car and pay the appropriate taxes in the State where he purchases it. If the thesis of petitioner’s brief is correct, however, that serviceman would have to pay the fees where he purchased the car, the fees of his home State the moment he drove it on its highways and, in addition, the fees of any other State into which he drove the car prior to returning to his home State.

In respondent’s situation a direct route from the state of purchase (Alabama) back to his permanent duty station (California) would pass through Mississippi, Louisiana, Texas, New Mexico, Arizona and Nevada—a total of eight states. If petitioner’s argument is a valid one, then each of those eight states could properly have demanded that respondent pay all of their license fees, taxes and excises. If petitioner’s argument is a valid one, respondent had no protection against this sort of liability *unless he could have forced Washington to accept (by mail) registration and license fees which were not yet required to be paid by him,*

for a car which Washington might well have refused to register.

The California Supreme Court in its opinion in the case at bar recognized that the Relief Act is designed to protect against multiple taxation and that to accept petitioner's argument would:

"... lead us to the very results which the Relief Act, by its purpose, seeks to avoid. If, for instance, California may exact the instant charges from defendant [respondent], then so may any other state into which he brings his vehicle until such time as he enters his domiciliary state and pays the fees there required for the first time. Such a narrow construction would frustrate the obvious beneficent purpose of the act . . ." (RT 48.)

V. Petitioner's Reliance on the Whiting Case Is Misdirected.

Petitioner attempts to argue that *Whiting v. City of Portsmouth*, 118 S.E. 2d 505 (Va. 1961), supports its position. This reliance is misdirected as the facts of the *Whiting* case have no parallel in the case at bar. *Whiting*, a serviceman, chose voluntarily to register his car in Virginia, the state where he was stationed, and paid all state taxes. *He had voluntarily chosen not to register it in Colorado, his state of domicile.* The issue was whether the City of Portsmouth, Virginia, where he lived, might assess him for city taxes. The court held that the city might do so because:

"... appellant would be exempt from payment of the Portsmouth license tax only if he had paid a license tax thereon in Colorado, where he claimed his residence to be. Since it is admitted that he had not paid such license tax in that State, *or elsewhere than in Virginia*, he is therefore not exempt from the payment of the license tax assessed by the city of Portsmouth." 118 S.E. 2d at 507. (Emphasis supplied.)

Thus, the court never considered what is the situation in respondent's case, that is, the effect of there being no tax yet required by the serviceman's state of domicile. Furthermore, it never considered the effect of the payment of taxes in a state *other* than his state of domicile.

The Supreme Court of California considered petitioner's reliance on the *Whiting* case and stated:

"... it does not appear from the opinion in that case [the *Whiting* case] whether the serviceman was *required* and had failed to pay fees in Colorado. Thus the issue herein raised was not considered or resolved by the Virginia court." (Emphasis the court's; portion in brackets supplied.) (T.R. 47)

CONCLUSION

This Court has consistently ruled that the Soldiers' and Sailors' Civil Relief Act must be construed liberally in favor of the serviceman. *LeMaistre v. Leffers*, 333 U.S. 1, 6; 92 L.ed 429; 68 Sup. Ct. 371 (1948). The judgment of the California Supreme Court gives the Act such a liberal construction and should be affirmed.

Respectfully submitted,

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September 22, 1965

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JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 40

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

LYMAN E. BUZARD,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

REPLY BRIEF OF PETITIONER

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ARGUMENT

I. The Imposition of California License Fees on Respondent's Vehicle Will Not Result in Multiple Taxation

Respondent urges that the imposition of motor vehicle fees under the facts of this case by the State of California would result in multiple taxation of servicemen.

Respondent states he voluntarily registered the car in Alabama and paid all Alabama fees at the time of purchase.¹ He did not then seek to register it in the State of Washington, his domiciliary state. He now

¹ The record shows that respondent purchased a used car which had Alabama license plates on it at the time of purchase (R 16).

urges imaginary difficulties that he would have encountered if he had tried to register it by mail. These imagined difficulties would not have developed since it was an ordinary factory-assembled vehicle and no physical examination of it by Washington authorities would have been required.² The interpretation of a statute (Section 574 of the Relief Act) should not rest upon an assumed state of facts unsupported by the record.

Respondent's argument that if California may impose license fees upon his vehicle then each of the states through which he would have traveled on his return to California could have done so fails to take into consideration the reciprocal or exemption provisions contained in state statutes applicable to non-resident motorists for a limited period provided the vehicle is properly registered in the state of residence.³

In fact, respondent, in order to take advantage of these and similar statutes, acquired the appearance of being a resident of the State of Alabama by obtaining an Alabama driver's license. In this connection the record discloses:

"Q. Now I am glad you mentioned the driver's license. You had a California driver's license?

"A. Yes.

² Appendix A, letters from the Manager of the Washington Title and Registration Branch, Motor Vehicle Division, indicates that the administrative practice of the State of Washington would not require a physical examination of respondent's vehicle.

³ In addition, all other state statutes on this subject are listed in Appendix B.

"Q. Valid California driver's license?

"A. Yes.

"Q. And you also had an Alabama?

"A. Yes, and a Washington State driver's license.

"Q. You got the Alabama license while in Alabama? [fol. 27] A. Yes.

"Q. And am I correct that that State, even though you are on military duty there, if you are going to be driving there for any period of time, requires you to have a license?

"A. I believe there is a similar Alabama law to the one that they have in California. *However, the main reason that I obtained the Alabama driver's license was to have a driver's license to match the automobile plates, because some states I have run into trouble with having a driver's license from one state and plates from another, and you get in hot water if you happen to get stopped.*

"Q. It makes it inconvenient for you?

"A. Yes." (R 18.) (Emphasis added.)

California has a greater interest in the matter of the taxation of respondent's vehicle than a state in which the vehicle merely passes through in transit. Respondent is permanently stationed in this state and necessarily uses the highways of this state. Thus, California should properly be allowed to tax such vehicle for the privilege of using the highway where, as here, the federal act does not prevent it.

In conformity with this principle, Section 6701 of the California Vehicle Code denies exemption to servicemen permanently stationed in this state in situations where they purchase and register vehicles in

states other than their resident states while absent from this state on temporary duty or military leave. Absent such legislation, the serviceman is at liberty to choose any state in which to register his vehicle although the major use of the vehicle will be in this state. Since a privilege tax is involved for the use of the highways, California may properly require motor vehicle fees from servicemen permanently stationed in this state who are not otherwise exempt under the Relief Act although such serviceman may be temporarily absent from this state pursuant to temporary duty orders or orders for military leave.

An analogous situation was presented in the case of *Storaasli v. Minnesota*, 283 U.S. 57, 75 L.Ed. 839, 51 S.Ct. 354, in which a nonresident stationed at a military reservation in Minnesota was held liable for the motor vehicle fees established by that state. The court held it proper to require a resident of a federal military reservation within a state to pay a state motor vehicle registration tax as a condition of the right to use the state highways, although the state provides that vehicles owned by nonresidents properly registered in the county or state of the owner and carrying appropriate license plates of such state may use the highways for a limited period without payment of any tax (*Bode v. Barrett*, 344 U.S. 583, 97 L.Ed. 567, 73 S.Ct. 468).

II. Effective Law Enforcement Through Registration of Vehicles Is of Major Import in This Case

Respondent raises the argument that imposition of the license fees are the paramount issue and not registration. He bases this upon his demonstrated willingness to register the vehicle without payment of the license fee as a condition thereof. The California Supreme Court adopted this argument.

The result reached, however, would be that respondent could then operate a vehicle in the State of California without registration or license plates because California has no statutory provisions for the registration of vehicles without payment of the license fees. The California Legislature did not provide for registration without payment of fees. Hence, law enforcement would be adversely affected by the existence of unidentifiable vehicles using California highways under these theories. Considering the volume of traffic to which the highways of the State of California are subjected, this is a vital problem.

CONCLUSION

Petitioner submits that the provisions of the Soldiers' and Sailors' Civil Relief Act do not prohibit the State of California from taxing respondent's vehicle and imposing criminal sanctions for nonpayment

of such taxes. The decision of the California Supreme Court holding to the contrary should be reversed.

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APPENDIX A

DEPARTMENT OF MOTOR VEHICLES
Olympia, Washington, August 9, 1965

Mr. Nelson P. Kempsey
Deputy Attorney General
Room 500 Wells Fargo Bank Building
Fifth Street and Capitol Mall
Sacramento, California 95814

Dear Mr. Kempsey:

The State of Washington requires inspection of the following vehicles:

- 1—Assembled Vehicles
- 2—Home Made Trailers
- 3—Trucks converted from passenger cars
- 4—Pickups with permanently attached campers
if passenger plates are applied for.

We do not require inspection of vehicles located in other states and owned by Washington residents who apply for Washington license except as above set forth. This applies to any resident of Washington whether or not he is in the armed services.

The above enumerated inspections would be required whether or not the vehicle was in Washington if application for Washington registration is made.

If a person states he is a resident of the State of Washington and we have no reason to believe otherwise, it would not be necessary for him to return to this State to register his vehicle in Washington.

Sincerely,

MARY R. HERN, *Manager*
Title and Registration Branch
Motor Vehicle Division

DEPARTMENT OF MOTOR VEHICLES
Olympia, Washington, October 1, 1965

The Honorable Thomas C. Lynch
Attorney General, State of California
500 Wells Fargo Bank Building
5th and Capitol Mall
Sacramento, California

Re: Assembled Vehicles, State of Washington

Dear Mr. Lynch:

Section 3, Chapter 16, page 29, of the Rules and Regulations of the Motor Vehicle Division of the Department of Licenses, of the State of Washington reads as follows:

ASSEMBLED VEHICLES.

“When a vehicle is assembled from the parts of two or more vehicles, the year and make of the vehicle are determined by the year and make of the chassis used. The County Auditor will assign a special number to be used as the identification number and this number must be stamped on the frame of the vehicle. Then it must be inspected by the Washington State Patrol for verification. The body type will be called ‘assembled’. A County Assessor’s appraisal slip is required to determine the excise tax and will be required each year the vehicle is licensed.

We trust this is the information you desire.

Sincerely,

MARY R. HERN, *Manager*
Title and Registration Branch
Motor Vehicle Division

APPENDIX B

I. Statutes of States on Direct Route From Alabama to California

ALABAMA:

Code of Alabama, Title 51

§ 707. "The provisions of the foregoing section relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this state and not used for hire (or used for commercial purposes) in this state, for a period of thirty days from date of entering the state, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration number as required thereby; . . ."

CALIFORNIA:

California Penal Code

§ 6700. "Non-resident owner of a foreign vehicle of a type otherwise subject to registration under this code may, subject to exceptions and special provisions contained in this chapter, operate or permit the operation of the vehicle within this State without registering the vehicle in, or paying any fees to, this State, subject to the condition that the vehicle at all times when operated in this State is duly registered in, and displays upon it valid license plates issued for the vehicle in, the place of residence of the owner."

MISSISSIPPI:

Mississippi Code Annotated
Title 37, Ch. 4, § 9352-20:

“ . . . Any nonresident of the State of Mississippi who has paid the current privilege tax required by the laws of another state upon a private carrier of passengers [passenger automobile], and thereafter becomes a resident of the State of Mississippi, or brings such vehicle into the State of Mississippi for use in connection with his business in this state, or who is gainfully employed in this state shall be entitled to operate such vehicle without obtaining a privilege license in this state for a period of not more than thirty (30) days.

“Resident for the purpose of registration and operation of motor vehicles shall include but not be limited to the following:

“(a) Any person, except a tourist or out-of-town student, who owns, leases or rents a place within the state and occupies same as a place of residence. . . .”

LOUISIANA:

Louisiana Statutes Annotated, Revised Statutes

R.S. 47: 511: “A vehicle owned by a resident of another state, which is there lawfully registered, may be operated upon the public highways of this state without registration or license when, by statute, contract, or understanding, an agreement had between the proper authorities of such state and the commissioner, there has been effected reciprocal arrangements whereby license plates of each state affected thereby are recognized by such other states, respectively, and when the vehicle bears approved license plates of

such state, if the same are required by the laws of that state. These operations shall be under the terms and provisions of such reciprocal arrangements."

R.S. 47: 512: "Subject to the rules and regulations prescribed by the commissioner, casual, irregular, occasional and unscheduled trips may be made into this state by foreign vehicles of nonresident owners, or by vehicles owned by the residents of another state or country, in the absence of any reciprocal agreements, without registration or the payment of a license fee as required by this Chapter, only when special permission from the commissioner has been obtained in each instance covering such casual, irregular, occasional and unscheduled operations."

TEXAS:

Vernon's Annotated Penal Code of Texas, Title 13
V. Ann. P.C. art. 827b:

"Section 1. The following words and phrases when used in this Act shall for the purpose of this Act have the meanings respectively ascribed to them in this Section as follows:

"... 'Nonresident' means every resident of a State or Country other than the State of Texas whose sojourn in this State is as a visitor and does not engage in gainful employment or enter into business or an occupation, except as may be otherwise provided in any reciprocal agreement with any other State or Country.

"... Section 2. A nonresident owner of a motor vehicle, trailer, or semi-trailer which has been duly registered for the current year in the State or Country of which the owner is a resident and in accordance with the laws thereof, may be allowed to operate said

vehicles for the transportation of persons or property for compensation or hire without being registered in this State, provided the owner thereof does not exceed two (2) trips during any calendar month and remains on each of said trips within the State not to exceed four (4) days. . . . And provided, further, that any nonresident owner of a privately owned vehicle may be permitted to make an occasional trip into this State with such vehicle under this Act without being registered in this State. It is also provided that a nonresident owner of a privately owned passenger car not operated for compensation or hire may be allowed to operate said passenger car if duly registered in his resident State or Country for the length of time the license plates are valid, provided the owner is a visitor in this State and does not engage in gainful employment or enter into any kind of business or occupation. It is expressly provided, that the foregoing privileges may only be allowed in the event that under the laws of such other State or Country like exceptions are granted to vehicles registered under the laws of and owned by residents of this State. Provided further, that nothing in this Act shall affect the rights or statutes of any vehicle owner under any Reciprocal Agreement between this State and any other State or Foreign Country. . . .”

NEW MEXICO:

New Mexico Statutes, Chapter 64, Article 6
§ 64-6-1:

“A. A nonresident owner owning any foreign vehicle of a type otherwise subject to registration hereunder may use or operate or permit the use or operation of such vehicle within this state for a period of

thirty [30] days without registering such vehicle in, or paying any fees to this state, subject to the condition that such vehicle at all times during this thirty [30] day period, when operated in this state, is duly registered in and displays upon it valid registration plate or plates issued for such vehicle in the place of residence of such owner”

ARIZONA:

Arizona Revised Statutes:

§ 28-501:

“ . . . G. Every foreign vehicle owned by a non-resident and operated in this state other than for transportation of passengers or property for compensation, or for transportation of property, or in the business of a nonresident carried on in this state, shall be registered within ten days after beginning operation in the state in like manner as vehicles owned by residents, and no fee shall be charged for the registration, nor shall any number plates be assigned to the vehicle, but the vehicle division shall issue to the nonresident owner a permit distinctive in form, containing the date issued, a brief description of the vehicle and a statement that the owner has procured registration of the vehicle as a nonresident. A non-resident owner shall not operate such a vehicle upon the highways of this state, either before or while it is registered as provided in this section, unless there is displayed thereon the registration plates assigned to the vehicle for the current calendar year by the state or country of which the owner is a resident, nor unless the permit prescribed by this subsection is displayed on the windshield of the vehicle in the manner prescribed by the division. The permit shall

be valid for the period for which the registration plate was issued by the state of which the owner is a resident."

NEVADA:

Nevada Revised Statutes, Title 43, Chapter 482
N.R.S. 482-385:

"1. Except as otherwise provided in NRS 482.390 [relating to commercial vehicles], a nonresident owner of a vehicle of a type subject to registration under this chapter, owning any vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in this state has displayed upon it the registration number plate or plates issued for such vehicle in the place of residence of such owner, may operate or permit the operations of such vehicle within this state without any registration thereof in this state under the provisions of this chapter and without the payment of any registration fees to the state"

II. List of Other State Statutes

1. ALASKA, Alas. Stats. 1962, Title 28, § 28.10.540.
2. ARKANSAS, Ark. Stats. 1947, Title 75, § 75-238.
3. COLORADO, Colo. Rev. Stats. 1963, Chapter 13, § 13-3-17.
4. CONNECTICUT, Conn. Gen. Stats., Title 14, § 14-34.
5. DELAWARE, Del. Code, Title 21, § 2112.
6. FLORIDA, Fla. Stats., Chapter 320, § 320.37.
7. GEORGIA, Code of Ga., Title 68, § 68-221.

8. HAWAII, Rev. Laws of Hawaii 1955, Title 21, § 160-12.
9. IDAHO, Ida. Code, Title 49, § 49-120.
10. ILLINOIS, Smith-Hurd Ill. Stats., Chapter 95½, § 3-402.
11. INDIANA, Ind. Stats., Title 47, § 47-2620.
12. IOWA, Iowa Code, Title XIII, Chapter 321, § 321.53.
13. KANSAS, Kan. Stats., Chapter 8, § 8-138.
14. KENTUCKY, Ky. Rev. Stats., Chapter 186, § 186.140.
15. MAINE, Maine Rev. Stats., Title 29, § 2243.
16. MARYLAND, Ann. Code, Art. 66½, § 57.
17. MASSACHUSETTS, Ann. Laws of Mass., Chapter 90, § 3.
18. MICHIGAN, Mason's 1961 Supplement, § 257.243.
19. MINNESOTA, Minn. Stats. Ann., Chapter 168.181.
20. MISSOURI, Vernon's Ann. Mo. Stats., Title 19, Chapter 301, § 301.271.
21. MONTANA, Rev. Codes of Mont., Title 53, § 53-129.
22. NEBRASKA, Rev. Stats. of Neb., Chapter 60, § 60-305.
23. NEW HAMPSHIRE, N.H. Rev. Stats., Title XXI, Chapter 260, § 260.39.
24. NEW JERSEY, N.J. Stats. Ann., Title 39, § 3-15.

25. NEW YORK, Consol. Laws of N.Y., Veh. & Traff. Law, Title II, Art. 3, § 250.
26. NORTH CAROLINA, Gen. Stats. of N.C., Div. IV, Chapter 20, Art. 3, § 20-4.4.
27. NORTH DAKOTA, N.D. Century Code, Title 39, § 39-04-18.
28. OHIO, Ohio Rev. Code, Title 45, § 4503.37.
29. OKLAHOMA, Okla. Stats. Ann., Title 47, § 22.12.
30. OREGON, Ore. Rev. Stats., Title 39, Chapter 481, § 481.155.
31. PENNSYLVANIA, Pa. Stats., Title 75, § 410.
32. RHODE ISLAND, Gen. Laws of R.I., Title 31, § 31-7-1.
33. SOUTH CAROLINA, Code of Laws of S.C., Title 46, § 46-101.
34. SOUTH DAKOTA, S.D. Code, Title 44, § 44.0112.
35. TENNESSEE, Tenn. Code, Title 59, § 59-435.
36. UTAH, Utah Code Ann., Title 41, § 41-1-19.
37. VERMONT, Vt. Stats. Ann., Title 23, § 411.
38. VIRGINIA, Codes of Va., Title 46.1, § 133.
39. WASHINGTON, Rev. Code of Wash. Ann., Title 46, § 46.16.030.
40. WEST VIRGINIA, W. Va. Code of 1961, Chapter 17-A, § 1721 (152).
41. WISCONSIN, Wis. Stats. Ann., Title 44; Veh. Code, Chapter 341, § 341.40.
42. WYOMING, Wyo. Stats., Title 31, § 31-68.

SUPREME COURT OF THE UNITED STATES

No. 40.—OCTOBER TERM, 1965.

California, Petitioner, }
v. } On Writ of Certiorari to the
Lyman E. Buzard. } Supreme Court of California.

[January 18, 1966.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, provides a nonresident serviceman present in a State in compliance with military orders with a broad immunity from that State's personal property and income taxation. Section 514 (2)(b) of the Act further provides that

"the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."¹

¹ 50 U. S. C., App. § 574 (2)(b). Section 514, 50 U. S. C., App. § 574, reads in relevant part as follows:

"(1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, . . . such person shall not be deemed to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal* property, income, or gross income of any such persons by any State, . . . of which such person is not a resident or in which he is not domiciled, . . . *personal property shall not be deemed to be*

The respondent here, Captain Lyman E. Buzard, was a resident and domiciliary of the State of Washington stationed at Castle Air Force Base in California. He had purchased an Oldsmobile while on temporary duty in Alabama, and had obtained Alabama license plates for it by registering it there. On his return, California refused to allow him to drive the car on California highways with the Alabama plates, and, since he had not registered or obtained license tags in his home State, demanded that he register and obtain license plates in California. When he sought to do so, it was insisted that he pay both the registration fee of \$8 imposed by California's Vehicle Code² and the considerably larger "license fee" imposed by its Revenue and Taxation code.³ The license fee is calculated at "two (2) percent of the market value of the vehicle," § 10752, and is "imposed . . . in lieu of all taxes according to value levied for State or local purposes on vehicles . . . subject to registration under the Vehicle Code" § 10758. Captain

located or present in or to have situs for taxation in such State, Territory, possession, or political subdivision, or district. . . .

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, . . . of which the person is a resident or in which he is domiciled has been paid." (50 U. S. C. App. § 574.)

The unitalicized text was enacted in 1942, 56 Stat. 769, 777. Concern whether nonresident servicemen were sufficiently protected from personal property taxation by host States led to a clarifying amendment in 1944, 58 Stat. 722. That amendment gave § 514 its two subsections. The italicized words in subsection (1) are the relevant additions to the original section. Subsection (2) was entirely new.

² The relevant provisions of the Vehicle Code, enacted in 1935, and recodified in 1959, are §§ 4000, 4750 and 9250.

³ The relevant provisions of the Revenue and Taxation Code, enacted in 1939, are §§ 10751, 10752 and 10758.

Buzard refused to pay the 2% fee,⁴ and was prosecuted and convicted for violating Vehicle Code § 4000, which provides that "[N]o person shall drive . . . any motor vehicle . . . upon a highway unless it is registered and the appropriate fees have been paid under this Code." The conviction, affirmed by the District Court of Appeal, 38 Cal. Rptr. 63, was reversed by the Supreme Court of California, 61 Cal. 2d 833, 395 P. 2d 953, 40 Cal. Rptr. 681. We granted certiorari, 380 U. S. 931, to consider whether § 514 barred California from exacting the 2% tax as a condition of registering and licensing Captain Buzard's car. We conclude that it did, and affirm.

The California Supreme Court's reversal of Captain Buzard's conviction depended on its reading of the words "required by" in the proviso of § 514 (2)(b). In the context of the entire statute and its prior construction, it gave those words the effect of barring the host State from imposing a motor vehicle "license, fee, or excise" unless (1) there was such a tax owing to and assessed by the home State and (2) that tax had not been paid by the serviceman. The mandatory registration statute of Washington, as of most States, imposes the duty to register only as to cars driven on its highways, and Captain Buzard had not driven his car in Washington during the registration year. The court reasoned that there was thus no "license, fee, or excise" owing to and assessed by his home State. Since there was on this view no tax "required by" Washington, the

⁴ Captain Buzard did not have sufficient cash to pay the \$3 registration fee and the approximately \$100 demanded in payment of the 2% tax and penalties. He testified without contradiction that at that time he "didn't refuse to pay" the tax. "He [the registration officer] said, 'Do you want to pay it now?' and I said, 'I don't have the money in cash with me, will you accept a check?' and he said, 'No.'" It was thereafter that Captain Buzard asserted his contention that the tax could not legally be assessed.

court concluded that California could not impose its tax, even though Captain Buzard had not paid any Washington tax.

If this reading of the phrase "required by" in the proviso were correct, no host State could impose any tax on the licensing or registration of a serviceman's motor vehicle unless he had not paid taxes actually owing to and assessed by his home State. If the serviceman were under no obligation to his home State, and payment of taxes was a prerequisite of registration or licensing under the host State statutes, the host State authorities might consider themselves precluded from registering and licensing his car. The California court did not confront this consequence of its construction, because it regarded the relevant provisions of California statutes as allowing registration and licensing whether or not taxes were paid; hence, the possibility of unregistered cars using the California highways was thought not to be at issue.⁵ The court's construction, however, per-

⁵ "Defendant does not contend that California may not, as an exercise of its police power, require him to register his automobile. In fact, his attempt to register the vehicle independently of the payment of fees and penalties was frustrated by the department. Defendant's position is simply that the Soldiers' and Sailors' Civil Relief Act of 1940 (hereinafter the Relief Act) prohibits the collection of such fees as an incident to a proper exercise of the police power or otherwise. As a consequence of the narrow question thus raised by the defendant, contentions which look to the purpose of registration in furtherance of proper law enforcement and administration fail to address themselves to the issue." 61 Cal. 2d, at 835, 395 P. 2d, at 594, 40 Cal. Rptr., at 682.

The statutory scheme severs the 2% tax provision of the Revenue and Taxation Code from the flat registration fee of \$8 requirement in the Vehicle Code. Vehicle Code of § 4000, under which respondent was prosecuted, refers only to payments of "the appropriate fees . . . under this Code" and Vehicle Code § 4750 refers only to "the required fee." The severability clause of the Revenue and Taxation

tained to the federal, not the State, statute; if correct, it would similarly restrict the imposition of other host States' registration and licensing tax provisions, whether or not they are as flexible as California's. We must therefore consider the California court's construction in the light of the possibility that in at least some host States, it would permit servicemen to escape registration requirements altogether.

Thus seen, the California court's construction must be rejected. Although little appears in the legislative history to explain the proviso,⁶ Congress was clearly concerned that servicemen stationed away from their home State should not drive unregistered or unlicensed motor vehicles. Every State required in 1944, and requires now, that motor vehicles using its highways be registered and bear license plates. Such requirements are designed to facilitate the identification of vehicle owners and the investigation of accidents, thefts, traffic violations and other violations of law. Commonly, if not universally, the statutes imposing the requirements of registration or licensing also prescribe fees which must be paid to authorize state officials to issue the necessary documents and plates. To assure that servicemen comply with the registration and licensing laws of some State, whether of their home State or the host State, we construe the phrase "license, fee, or excise required by the State . . ." as equivalent to "license, fee, or excise of the State. . . ." Thus read, the phrase merely indicates Congress' recognition that, in one form or another, all States have laws governing the registration and licensing of motor vehicles, and that such laws

Code, § 26, provides that if application of any provision of that Code to "any person or circumstance, is held invalid . . . the application of the provision to other persons or circumstances, is not affected."

⁶ H. R. Rep. No. 1514, 78th Cong., 2d Sess.; S. Rep. No. 959, 78th Cong., 2d Sess. There were no debates.

impose certain taxes as conditions thereof. The serviceman who has not registered his car and obtained license plates under the laws "of" his home State, whatever the reason, may be required by the host State to register and license the car under its laws.

The proviso is to be read, at the least, as assuring that § 514 would not have the effect of permitting servicemen to escape the obligation of registering and licensing their motor vehicles. It has been argued that § 514 (2)(b) also represents a congressional judgment that servicemen should contribute to the costs of highway maintenance, whether at home or where they are stationed, by paying whatever taxes the State of registration may levy for that purpose. We conclude, however, that no such purpose is revealed in the section or its legislative history and that its intent is limited to the purpose of assuring registration. Since at least the 2% tax here involved has been held not essential to that purpose as a matter of state law, we affirm the California Supreme Court's judgment.

It is plain at the outset that California may collect the 2% tax only if it is a "license, fee, or excise" on a motor vehicle or its use. The very purpose of § 514 in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders. The statute operates whether or not the home State imposes or assesses such taxes against him. As we said in *Dameron v. Brodhead*, 345 U. S. 322, 326, "... though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence

there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right." Motor vehicles were included as personal property covered by the statute. Even if Congress meant to do more by the proviso of § 514 (2)(b) than insure that the car would be registered and licensed in one of the two States, it would be inconsistent with the broad purposes of § 514 to read subsection (2)(b) as allowing the host State to impose taxes other than "licenses, fees, or excises" when the "license, fee, or excise" of the home State is no paid.⁷

Although the Revenue and Taxation Code expressly denominates the tax "a license fee," § 10751, there is no persuasive evidence Congress meant state labels to be conclusive; therefore, we must decide as a matter of federal law what "licenses, fees, or excises" means in the statute. See *Storaasli v. Minnesota*, 283 U. S. 57, 62. There is nothing in the legislative history to show that Congress intended a tax not essential to assure registration, such as the California "license fee," to fall within the category of "licenses, fees, or excises" host States might impose if home State registration was not effected. While it is true that a few state taxes in effect in 1944, like the California 2% "license fee," were imposed solely for revenue purposes, the great majority of state taxes also served to enforce registration and licensing statutes.⁸

⁷ Contra, *Whiting v. City of Portsmouth*, 202 Va. 609, 118 S. E. 2d 505; *Snapp v. Neal*, 250 Miss. 579, 164 So. 2d 752, reversed today, *post*, p. —

⁸ Most States in 1944, as now, conditioned registration and the issuance of license plates upon the payment of a registration fee measured by horsepower, weight or some combination of these factors. See, e. g., Revised Code of Delaware (1935) § 5564 (weight); 4A Page's Ohio General Code (1945 Repl. Vol.) § 6292 (weight); 18 Missouri Revised Statutes Ann. (1942) § 8369 (horsepower); 2 Revised Statutes of New Jersey (1937) § 39:3-8 (horsepower);

No discussion of existing State laws appears in the Committee Reports. There is thus no indication that Congress was aware that any State required that servicemen contribute to the costs of highway maintenance without regard to the relevance of such requirements to the non-revenue purposes of state motor vehicle laws.

The conclusion that Congress lacked information about the California practice does not preclude a determination that it meant to include such taxes, levied only for revenue, as "licenses, fees, or excises." But in deciding that question in the absence of affirmative indication of congressional meaning, we must consider the overall purpose of § 514 as well as the words of subsection (2)(b). Taxes like the California 2% "license fee" serve primarily a revenue interest, narrower in purpose but no different in kind from taxes raised to defray the general

1 General Statutes of Connecticut (1930) § 1578 (cubic displacement); Code of Iowa (1939) § 5008.05 (value and weight); 1 Digest of the Statutes of Arkansas (1937) § 6615 (horsepower and weight).

Other States charged a flat fee. See, e. g., 8 Oregon Compiled Laws (1940) §§ 115-105, 115-106; 5 Ariz. Code (1939) § 66-256; Compiled Laws of Alaska (1933) § 3151.

A few States, such as California, charged both a flat registration fee and a larger, variable "license fee" measured by vehicle value. See, e. g., California Vehicle Code (1935) §§ 140, 148, 370, California Revenue and Taxation Code (1939) §§ 10751-10758; 7A Remington's Revised Statutes of Washington (1937 Repl. Vol.) §§ 6312-16, 6312-102; compare 7 Mississippi Code (1942) §§ 9352-19, 9352-03 (certificate of payment of ad valorem taxes required of those who must pay it); 4 Wyoming Compiled Statutes (1945), §§ 60-103, 60-104 (flat fee plus ad valorem fee; ad valorem fee to be paid only by persons actually driving in the State).

The statutes commonly recited that these fees, whatever their measure, were imposed for the privilege of using the State's highways; the proceeds were usually devoted to highway purposes. Even where property value was the measure of the fees, they were characterized as privilege, not property, taxes. See, e. g., *Ingels v. Riley*, 5 Cal. 2d 154, 53 P. 2d 939 (1936).

expenses of government.⁹ It is from the burden of taxes serving such ends that nonresident servicemen were to be freed, in the main, without regard to whether their home States imposed or sought to collect such taxes from them. *Dameron v. Brodhead*, *supra*. In recent amendments, Congress has reconfirmed this basic purpose.¹⁰ We do not think that subsection (2)(b) should be read as impinging it. Rather, reading the Act, as we must, "with an eye friendly to those who dropped their affairs to answer their country's call," *Le Maistre v. Leffers*, 333 U. S. 1, 6, we conclude that subsection (2)(b) refers only to those taxes which are essential to the functioning of the host State's licensing and registration laws in their application to the motor vehicles of nonresident servicemen. Whether the 2% tax is within the reach of the federal immunity is thus not to be tested, as California argues, by whether its inclusion frustrates the administration of California's tax policies. The test, rather, is whether the inclusion would deny the State power to enforce the nonrevenue provisions of state motor vehicle legislation.

Whatever may be the case under the registration and licensing statutes of other States California authorities have made it clear that the California 2% tax is not imposed as a tax essential to the registration and licensing of the serviceman's motor vehicle.¹¹ Not only did

⁹ Indeed, the 2% "license fee" was adopted in 1935 as a substitute for local *ad valorem* taxation of automobiles, which had proved administratively impractical. Stockwell, *Studies in California State Taxation, 1910-35*, at pp. 108-110 (1939); Final Report of the California Tax Commission 102 (1929). Its basis remains the location of the automobile in the State.

¹⁰ Pub. L. § 87-771, 76 Stat. 768.

¹¹ It is not clear from the California courts' opinions whether they regard the \$8 registration fee as a fee essential to the registration and licensing of the motor vehicle. Therefore that question remains open for determination in the state courts.

the California Supreme Court regard the statutes as permitting registration without payment of the tax, but the District Court of Appeal, in another case growing out of this controversy, expressly held that "[t]he registration statute has an entirely different purpose from the license fee statutes, and it is clearly severable from them." *Buzard v. Justice Court*, 198 C. A. 2d 814, 817, 18 Cal. Rptr. 348, 349-350.¹² The California Supreme Court also held, in effect, that invalidity of the "license fee" as applied was a valid defense to prosecution under Vehicle Code § 4000. In these circumstances, and since the record is reasonably to be read as showing that Captain Buzard would have registered his Oldsmobile but for the demand for payment of the 2% tax, the California Supreme Court's reversal of his conviction is

Affirmed.

¹² See note 5, *supra*.